

Christopulos v Christopulos
2019 NY Slip Op 34855(U)
January 11, 2019
Supreme Court, Queens County
Docket Number: Index No. 705015/2014
Judge: Frederick D.R. Sampson
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Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY
Present: HONORABLE FREDERICK D.R. SAMPSON IAS TERM, PART 31
Justice

GREGORY CHRISTOPULOS, x
Plaintiff,

-against-

KATHERINE CHRISTOPULOS,
Individually and as Trustee of the
Julia Christopulos Irrevocable Trust,
BROWNSTONE RESTORATION, INC.,
and NICHOLAS SPYREAS,
Defendants. x

Index
Number: 705015 / 2014
Motion
Dates: September 6, 2018
November 29.2018

Motion Seq. Nos.: 12 and 13

The following papers numbered 1 to 4, 1 to 2, E135 to E146, E152 to E173, and E177 to E186, read on this motion by defendant, Nicholas Spyreas (Seq. 12), seeking to vacate and strike plaintiff's note of issue, pursuant to 22 NYCRR 202.21 (e); and cross motion by plaintiff seeking, among other things, summary judgment against Katherine Christopulos for breach of her fiduciary duties, and to remove her as Trustee, pursuant to CPLR 3212; and this motion by plaintiff (Seq. 13) seeking to, among other things, strike Spyreas' answer for failure to comply with discovery, pursuant to CPLR 3126, and to cancel the mechanic's liens filed by Spyreas.

Table with 2 columns: Description of papers and Papers Numbered. Includes entries for Notices of Motion and Cross Motion (Seq. 12) - Affirmation - Affidavit - Exhibits (1-4, E135-E144), Answering Affirmations - Exhibits (E145-E146, E152-E157), Reply Affirmation - Exhibits (E158-E159), Notice of Motion (Seq. 13) - Affirmation - Exhibits (E160-E171), and Answering Affirmation - Affidavit - Exhibits (1-2).

E172-E173

Reply Affirmation - Exhibits E177-E186

Julia Christopulos was the owner of premises located at 155-28 Cherry Avenue, Flushing, New York. Her daughter, defendant, Katherine Christopulos, and Kaatherine's family, lived with Julia at said premises. In February 2011, Julia created the Julia Christopulos Irrevocable Trust, designating Katherine as Trustee. Said Trust was, by its terms, immediately effective, and was to terminate upon the death of Julia, at which time the Trustee was to distribute the corpus of the Trust to Katherine and her brother, plaintiff, Gregory Christopulos, per stripes, in as nearly equal shares as possible. Julia died on June 18, 2013, a resident of Queens County. Katherine was named Administrator of Julia's estate. The residence property effectively constituted the entirety of the estate. Katherine, as Administrator/Trustee, has not sold the residence property to date, alleging, as one reason therefor, that the property is burdened by three mechanic's liens taken out by her brother, plaintiff's brother-in-law, defendant Nicholas Spyreas, in the names of Brownstone Restoration, Inc., and his own name "d/b/a Brownstone Restoration." Defendant, Spyreas, alleges that the liens are for construction work performed on the residence property at the behest of the now-deceased, Julia, in the amount of over \$523,000.00.

Plaintiff commenced this action seeking an accounting from the Trustee for the expenses of, and income to, the property from the inception of the Trust; for specific performance ordering the dissolution of the Trust and a distribution of the Trust property; for damages for unjust enrichment and conversion; for removal of Katherine as Trustee; and against Brownstone Restoration, Inc. and Spyreas to cancel the mechanic's liens. Plaintiff moves for an order (Seq. 13), pursuant to CPLR 3126, striking Spyreas' answer, and cancelling the mechanic's liens, on the ground, among others, that said defendant has failed to comply with this court's previous order for discovery, dated July 11, 2018.

"Resolution of discovery disputes and the nature and degree of the penalty to be imposed pursuant to CPLR 3126 are matters within the sound discretion of the motion court" (*Hasan v 18-24 Luquer St. Realty, LLC*, 144 AD3d 631, 632 [2d Dept 2016], quoting *Richards v RP Stellar Riverton, LLC*, 136 AD3d 1011, 1011 [2d Dept 2016]). Striking a pleading or prohibiting the introduction of evidence, pursuant to CPLR 3126, for failure to comply with disclosure is a drastic remedy, and is only appropriate where there is a clear showing that the failure to comply was willful, contumacious or in bad faith (*see Soto v Chelsea W26, LLC*, 166 AD3d 1048 [2d Dept 2018]; *Teitelbaum v Maimonides Medical Center*, 144 AD3d 1013 [2d Dept 2016]; *Cioffi v S.M. Foods Inc.*, 142 AD3d 520 [2d Dept 2016]). It may be inferred that a party's conduct is willful and contumacious when said party repeatedly fails to comply with court orders compelling disclosure without providing a reasonable excuse for said party's noncompliance, over an extended period of time (*see Candela v Kantor*, 154 AD3d 733 [2d Dept 2017]; *Desiderio v GEICO Gen. Ins. Co.*, 153 AD3d 1322 [2d Dept 2017]; *Pesce v Fernandez*, 144 AD3d 653 [2d Dept 2016]).

“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” (*Kihl v Pfeffer*, 94 NY2d 118, 123 [1999]). When a party fails to comply with court orders, for an extended period of time, without a reasonable excuse, thereby frustrating the disclosure scheme set forth in the CPLR, it is well within the broad discretion of the trial court to strike a pleading (*see Zletz v Wetanson*, 67 NY2d 711 [1986]; *Ozeri v Ozeri*, 135 AD3d 838 [2016]; *Lazar, Sanders, Thaler & Associates, LLP*, 131 AD3d 1133 [2015]).

“A conditional order of preclusion requires a party to provide certain discovery by a date certain, or face the sanctions specified in the order ... [i]f the party fails to produce the discovery by the specified date, the conditional order becomes absolute” (*Honghui Kuang v MetLife*, 159 AD3d 878, 881-882 [2d Dept 2018], quoting *Wei Hong Hu v Sadiqi*, 83 AD3d 820, 821 [2d Dept 2011]; *see Khan v Old Navy*, 166 AD3d 599 [2d Dept 2018]; *Tanriverdi v United Skates of America, Inc.*, 164 AD3d 858 [2d Dept 2018]). In the case at bar, Spyreas’ answer was conditionally stricken by this court’s order of July 11, 2018, filed, and served on Spyreas, on July 27, 2018. While Spyreas did respond to said ordered requests for discovery, his response was wholly inadequate and, therefore, noncompliant. Further, said response was devoid of any explanations for the failures to comply. Consequently, plaintiff’s motion seeking to enforce the conditional order, dated July 11, 2018, is granted, and defendant, Spyreas’ answer is stricken.

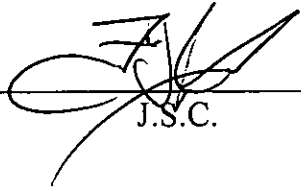
Consequently, Spyreas’ motion (Seq. 12) seeking to vacate and strike plaintiff’s note of issue, based on the alleged failure of plaintiff to appear for deposition by Spyreas, is denied as moot. “Entry of an order pursuant to CPLR 3126 striking an answer is the equivalent of a default in answering” (*Fappiano v City of New York*, 5 AD3d 627, 628 [2d Dept 2004]; *see Rokina Opt. Co. v Camera King*, 63 NY2d 728 [1984]; *Richter v Sportsmans Properties, Inc.*, 82 AD3d 733 [2d Dept 2011]; *Pisciotta v Lifestyle Designs, Inc.*, 62 AD3d 850 [2d Dept 2009]). As a result of his answer having been stricken, Spyreas is in default, and has forfeited his right to further discovery from plaintiff (*see Reynolds Securities v Underwriters Bank & Trust Co.*, 44 NY2d 568 [1978]; *Montgomery v City of New York*, 307 AD2d 957 [2d Dept 2003]).

Plaintiff has cross-moved for summary judgment on liability with regard to the causes of action against Katherine for specific performance, breach of fiduciary duty, and for an accounting, and also seeks an order cancelling all three liens filed by defendant, Spyreas. Such cross motion is denied as moot, as such issues have been determined and resolved by the court’s decision and order, dated October 25, 2018, and filed on November 16, 2018, on the motion designated as Seq. 10.

Movants’ remaining contentions are either without merit, or need not be addressed in light of the aforementioned determinations.

Accordingly, plaintiff's motion (Seq. 13), seeking CPLR 3126 relief, is granted, and defendant, Spyreas' answer is stricken. Defendant, Spyreas' motion (Seq. 12) seeking to vacate and strike plaintiff's note of issue, and plaintiff's cross motion for summary judgment, are both denied.

Dated: January 11, 2019



J.S.C.

FILED
JAN 28 2019
COUNTY CLERK
QUEENS COUNTY