

Gomez v Ruff Ryders, Inc.

2020 NY Slip Op 32972(U)

September 9, 2020

Supreme Court, New York County

Docket Number: 650152/2019

Judge: W. Franc Perry

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

-----X

MICHAEL GOMEZ,

Plaintiff,

- v -

RUFF RYDERS, INC., RUFF RYDERS ENTERTAINMENT, INC., RUFF RYDERS PRODUCTIONS, INC., DEAD GAME MUSIC PUBLISHING, INC., DEVELOPMENT OUTREACH, INC., DEAD GAME PUBLISHING, INC.

Defendant.

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INDEX NO. 650152/2019

MOTION DATE March 19, 2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 56, 57, 58, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for WITHDRAW- ATTORNEY ;

And were read on the cross motion to/for STRIKE PLEADINGS

In this breach of contract action, plaintiff seeks to recover damages in the amount of \$400,000, for unpaid royalties for musical works and sound recordings produced and written, or co-written by plaintiff and released and administered by Defendants. In motion sequence number 002, the attorney for defendants, Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc., seeks to withdraw as attorney of record; plaintiff has filed a cross motion seeking to strike defendants, Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc.'s answer for failure to comply with this court's conditional discovery order which required production of outstanding

discovery on or before January 16, 2020.¹ The motions have been fully submitted and are consolidated for disposition.

DISCUSSION

As noted, plaintiff had previously sought to compel defendants to produce documents responsive to Plaintiff 's First Notice for Discovery and Inspection served on April 12, 2019. (NYSCEF Doc. Nos. 16-29). In its Decision and Order issued on December 16, 2019, this court found defendants had willfully failed to provide discovery as previously ordered by the court and issued a conditional order striking defendants' answer unless, within 30 days from service of a copy of this order with notice of entry, defendants produced documents responsive to plaintiff's First Notice for Discovery and Inspection served on April 12, 2019. (NYSCEF Doc. No. 54). Defendants served the conditional order with notice of entry on December 16, 2019, thus requiring production of the documents on or before January 16, 2020. (NYSCEF Doc. No. 55).

On February 3, 2020, the attorney for defendants, Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc., moved by Order to Show Cause to withdraw, citing defendants' "lack of cooperation" and generally noting irreconcilable differences between attorney and client with respect to the proper course to be pursued in the litigation. (NYSCEF Doc. No. 58). It is uncontested that prior to filing the motion to withdraw, defendants Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc., did not produce the outstanding documents and discovery responses on or before January 16, 2020, as directed by the court, nor have they demonstrated a reasonable excuse for the failure to comply with this court's order.

¹ Plaintiff does not seek to strike defendant Development Outreach Inc.'s answer.

A conditional order of preclusion requires a party to provide certain discovery by a date certain, or face the sanctions specified in the order (see *Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 942 NE2d 277, 917 NYS2d 68 [2010]; *Hughes v Brooklyn Skating, LLC*, 120 AD3d 758, 758-759, 991 NYS2d 326 [2014]; *Wei Hong Hu v Sadiqi*, 83 AD3d 820, 821, 921 NYS2d 133 [2011]). If the party fails to produce the discovery by the specified date, the conditional order becomes absolute (see *Piemonte v JSF Realty, LLC*, 140 AD3d 1145, 1146, 36 NYS3d 146 [2016]; *Vitolo v Suarez*, 130 AD3d 610, 611, 13 NYS3d 177 [2015]; *Archer Capital Fund, L.P. v GEL, LLC*, 95 AD3d 800, 801, 944 NYS2d 179 [2012]; *Keenan v Fiorentino*, 84 AD3d 740, 921 NYS2d 874 [2011]; *Wei Hong Hu v Sadiqi*, 83 AD3d at 821; *Pugliese v Mondello*, 67 AD3d 880, 881, 891 NYS2d 414 [2009]). To be relieved of the adverse impact of the conditional order of preclusion, a party is required to demonstrate a reasonable excuse for the failure to comply with the order and the existence of a potentially meritorious defense (see *Archer Capital Fund, L.P. v GEL, LLC*, 95 AD3d at 801; *Wei Hong Hu v Sadiqi*, 83 AD3d at 821).

It is well settled that the failure to comply with court-ordered deadlines “not only impairs the efficient functioning of the courts and the adjudication of claims, but . . . breeds disrespect for the dictates of the Civil Practice Law and Rules and a culture in which cases can linger for years without resolution” (*Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 81, 942 NE2d 277, 917 NYS2d 68 [2010]; see *Miceli v State Farm Mut. Auto. Ins. Co.*, 3 NY3d 725, 726-727, 819 NE2d 995, 786 NYS2d 379 [2004]; *Brill v City of New York*, 2 NY3d 648, 652, 814 NE2d 431, 781 NYS2d 261 [2004]; *Kihl v Pfeffer*, 94 NY2d 118, 123, 722 NE2d 55, 700 NYS2d 87 [1999]). Thus, “[d]ismissal of a pleading” is warranted when a party fails to comply with a court order and frustrates the disclosure scheme set forth in the CPLR. (*Hall v. Integrity Real Estate Properties, Inc.*, 124 AD3d 1270, 1271, 1 N.Y.S.3d 632 [2015]).

Here, defendants Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc., have not produced the outstanding discovery, nor have they demonstrated a reasonable excuse for the failure to comply with the court's discovery orders. (*Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 942 N.E.2d 277, 917 N.Y.S.2d 68 [2010]; *Tejada v 750 Gerard Properties, Inc.*, 272 AD2d 124, 707 N.Y.S.2d 174 [1st Dept 2000]). In seeking to be relieved, defendants' attorney refers generally to his clients' lack cooperation and irreconcilable difference with respect to the proper course to be pursued in the litigation; however, defendants did not request an extension of time to comply with the court's conditional order and have not demonstrated a reasonable excuse for the failure to comply with the conditional order.

Plaintiff does not oppose defendants' motion to withdraw, however, he seeks an order striking defendants' answer in accordance with this court's conditional order, noting that the order became absolute prior to the time that defendants' motion to withdraw was filed, and urges that this court not allow differences defendants may have with their attorney to excuse their repeated violation of this court's orders and to further delay resolution of this action by refusing to comply with discovery deadlines.

Based on the record before the court, plaintiff has demonstrated that defendants' conduct warrants the striking of their answer. (See, generally, *Legarreta v Neal*, 108 AD3d 1067, 969 N.Y.S.2d 305 [4th Dept 2013] [party's willfulness or contemptuousness inferred from repeated failure to comply with demands or discovery orders and warranted striking of pleading]; see also *Keller v Merchant Cap. Portfolios, LLC*, 103 AD3d 532, 962 N.Y.S.2d 48 [1st Dept 2013] [conditional order properly enforced without need for finding that defendant's conduct willful; failure to comply timely with three court orders, including conditional order striking answer

warranted inference of willfulness]). However, recognizing that actions should be resolved on the merits wherever possible, and in the exercise of this court's discretion, defendants Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc., are afforded one last opportunity to provide the outstanding discovery and documents responsive to Plaintiff's First Notice for Discovery and Inspection served on April 12, 2019, on or before December 1, 2020.

Defendants' attorney's motion seeking to withdraw is granted without opposition, upon compliance with the conditions set forth herein. Defendants Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc., will be afforded one final opportunity to comply with the outstanding discovery and are granted an extension to produce the documents on or before December 1, 2020. In the event defendants Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc. comply and timely produce the outstanding discovery, the action will thereafter be scheduled for a status conference in Part 23. If defendants fail to comply on or before December 1, 2020, their answer will be stricken and an inquest for damages will be ordered, upon submission of an affirmation of non-compliance.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion of Gregory H. Griffith, Esq. to be relieved as attorney for defendants, Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc., is granted without opposition upon filing of proof of compliance with the following conditions; and it is further

ORDERED that, within 10 days from entry, said attorney shall serve a copy of this order with notice of entry upon the former clients at its last known address by certified mail, return receipt requested, and upon the attorneys for all other parties appearing herein by posting to the New York State Courts Electronic Filing System; and it is further

ORDERED that, together with the copy of this order with notice of entry served upon the former client, moving counsel shall forward a notice directing the former client to appoint a substitute attorney within 30 days from the date of the mailing of the notice and the client shall comply therewith; and it is further

ORDERED that any new attorney retained by defendants shall file a notice of appearance with the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and the Clerk of the Part within 40 days from the date the notice to retain new counsel is mailed; and it is further

ORDERED that no further proceedings may be taken against the former client without leave of this court for a period of 40 days after service on the former client of the aforesaid notice to appoint a substitute attorney; and it is further


ORDERED that plaintiff's cross motion to strike defendants' Ruff Ryders, Inc., Ruff Ryders Entertainment, Inc., Ruff Ryders Productions, Inc., Dead Game Music Publishing, Inc., and Dead Game Publishing Inc., answer for failure to comply with this court's conditional order is granted in accordance with this decision; and it is further

ORDERED that the departing attorney shall, within 10 days from entry, serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office, the filing of a notice of appearance as provided herein, and the filing of papers as aforesaid shall be made in

accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

Any requested relief not expressly addressed by the court has nonetheless been considered and is hereby denied and this constitutes the decision and order of this court.

9/9/2020					
DATE			W. FRANC PERRY, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>
				OTHER	<input type="checkbox"/>