

<b>Lichtenstein v Danino</b>
2020 NY Slip Op 32998(U)
September 10, 2020
Supreme Court, Kings County
Docket Number: 515841/17
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8  
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ABRAHAM LICHTENSTEIN,  
Plaintiff, Decision and order

- against - Index No. 515841/17

MORDECHAI DANINO, STAR NADLAN LLC, E.N.Y.  
PLAZA LLC and ALAD DANINO,  
Defendants, September 10, 2020

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved compelling the defendants to comply with discovery demands served or in the alternative precluding the defendants from introducing such evidence at trial or dismissing the answers. The plaintiff has further moved seeking to extend the Notice of Pendency and the Note of Issue. The defendants have cross-moved essentially seeking to dismiss the lawsuit due to the plaintiff's failure to provide any discovery and to engage in the continuation of the lawsuit. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, the complaint alleges the plaintiff loaned the defendant \$125,000 during 2008 and indeed on October 24, 2008 the defendant Mordechai Danino signed a confession of judgement which was subsequently entered under Index Number 19038/2009 on July 28, 2009. Toward the end of 2013 Danino requested of plaintiff the removal of the confession of judgement so property he owned at 3605 Avenue K in Kings County could be

sold without any liens. Indeed, the plaintiff signed such release on December 8, 2013. In exchange for that concession Danino signed a separate document entitled a 'Write of Commitment' wherein he acknowledged a debt owed of \$200,000. The Writ further stated that the money would be repaid by selling property he owned located at 471 Flushing Avenue in Kings County or from a mortgage on property located at 1054 East New York Avenue also in Kings County. These discovery motions followed.

#### Conclusions of Law

It is well settled that the trial court maintains broad discretion concerning the appropriate sanction for a discovery violation (Espinal v. City of New York, 264 AD2d 806, 695 NYS2d 610 [2d Dept., 1999]). The severe sanction of striking a pleading is appropriate where it can be demonstrated that the failure to comply with discovery was the result of wilful and contumacious conduct (Harris v. City of New York, 211 AD2d 663, 622 NYS2d 289 [2d Dept., 1995]). Such conduct may be inferred from a party's actions, specifically a long period of time passing without complying with the discovery coupled with the absence of any reasonable excuse to explain such failure to comply (Birch Hill Farm Inc., v. Reed, 272 AD2d 282, 707 NYS2d 188 [2d Dept., 2000]). Generally, the failure of either party to provide sought after discovery and to follow the express order of the court

demonstrates a "pattern of wilful default and neglect" concerning the outstanding discovery (Clarke v. United Parcel Service Inc., 300 AD2d 614, 752 NYS2d 395 [2d Dept., 2002]). Thus, each party is required to introduce a reasonable excuse why such discovery has yet been complied with (Birch Hill Farm Inc., supra).

In this case both the plaintiff and the defendant accuse the other party of failing to properly provide discovery. Further, each party has accused the other of delay, intransigence and the unwillingness to properly engage in discovery. Thus, the motions are resolved as follows. The request to extend the Notice of Pendency is granted. The Note of Issue is extended until February 28, 2021. All outstanding discovery must be fully complied with by both parties by October 31, 2020 unless the parties agree otherwise. If an agreement regarding an extension is not reached then any party who fails to fully comply with the discovery requested by October 31, 2020 will be precluded from participating in the action without the need for further motion. If there is any discovery demand requested where an objection is raised then such objection should be forwarded to the court within 5 days so a ruling can be made on such discovery. Thus, without the court being notified of such objection all other discovery must be complied with or such party will be subject to automatic preclusion. Thus, there can be no excuse for the non-compliance of discovery that can survive this decision since all discovery

that is the subject of an objection will have been resolved before the deadline date. Indeed, if any other issue arises that cannot be contemplated at this time that demands an extension or that may provide one party from participating or providing discovery as indicated in this order, such issue must be raised with the court within 5 days. The failure to do so will be deemed a waiver of that issue and will not excuse the participation of discovery. The parties may contact the court at any time to further guide the parties regarding this order.

So ordered.

ENTER:

DATED: September 10, 2020  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC