

Respetable Logia Simbolica Silencio, Inc. v Masonic Lodge "Silencio #16 De Don Pedro Martin," Inc.

2021 NY Slip Op 30031(U)

January 4, 2021

Supreme Court, New York County

Docket Number: 656099/2018

Judge: John J. Kelley

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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. JOHN J. KELLEY **PART** **IAS MOTION 56EFM**

Justice

-----X

RESPECTABLE LOGIA SIMBOLICA SILENCIO, INC., and
SERINISIMA GRAN LOGIA DE LENGUA ESPANOLA
PARA ESTADOS UNIDOS

Plaintiffs,

- v -

MASONIC LODGE "SILENCIO #16 DE DON PEDRO
MARTIN," INC., and JOSE LUIS CARRION,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 (Motion 003).

were read on this motion to/for STRIKE ANSWER/DISCOVERY SANCTIONS.

In this action to recover damages for conversion and breach of fiduciary duty, and for a judgment awarding declaratory relief (hereinafter Action No. 2), the plaintiffs move pursuant to CPLR 3126 to strike the defendants' answer for failure to comply with discovery demands and orders. The defendants do not oppose the motion. The motion is granted, the defendants' answer is stricken, and the matter is set down for an inquest on the issue of damages and other appropriate relief, to be conducted simultaneously with the trial in the related action entitled *Masonic Lodge "Silencio #16 De Don Pedro Martin," Inc. v Fraternidad Realty Corp.*, pending in this court under Index No. 655299/2017 (hereinafter Action No. 1).

Masonic Lodge "Silencio #16 De Don Pedro Martin," Inc. (hereinafter Martin Masonic Lodge) commenced Action No. 1 in 2017 against Fraternidad Realty Corp. (hereinafter Fraternidad), the owner of the building leased by Martin Masonic Lodge. In the complaint in Action No. 1, Martin Masonic Lodge alleged that it had loaned Fraternidad the principal sum of \$67,000 that Fraternidad had never repaid, and it sought to recover that sum, plus interest and

costs, for a total of \$95,000. The court conducted a preliminary conference in Action No. 1 on July 24, 2018, a compliance conference on November 29, 2018, and status conferences on August 20, 2019, February 4, 2020, and August 25, 2020.

On December 7, 2018, Respectable Logia Simbolica Silencio, Inc. (Respectable Logia), and Serenisima Gran Logia de Lengua Espanola Para Estados Unidos (together the RLSS parties), represented by the same attorneys who represented Fraternidad in Action No. 1, together commenced Action No. 2 against Martin Masonic Lodge and Respectable Logia's former president, Jose Luis Carrion. In their complaint in Action No. 2, the RLSS parties alleged that

“Carrion suspended almost all of the active members of the [Respectable] Lodge for alleged non-payment of dues, incorporated a new non-profit corporation [Martin Masonic Lodge] with a name confusingly similar to the [Respectable] Lodge, transferred the [Respectable] Lodge's bank accounts to his new corporation, and stole almost all of the [Respectable] Lodge's available funds. Carrion also took all of the [Respectable] Lodge's paraphernalia and moved the [Respectable] Lodge's headquarters from 345 West 45th Manhattan, a place it had occupied since World War II, to his own home. Carrion's new corporation is now trying to collect the last known asset of the [Respectable] Lodge, a loan to its landlord in the net amount of \$57,000.”

In Action No. 2, the RLSS parties seek to recover the sum of \$117,494 that they claimed were its liquid assets, along with lodge paraphernalia, that Carrion purportedly had converted to his own personal use. They also seek a judgment declaring that Carrion, in the absence of approval from the Grand Lodge that oversees Spanish-speaking Masonic lodges in the United States, had no authority to incorporate or administer Martin Masonic Lodge or employ any of Respectable Logia's assets, property, or paraphernalia in doing so.

On January 15, 2019, the RLSS parties requested a preliminary conference in Action No. 2. Before a preliminary conference could even be scheduled, they moved to strike the Martin Masonic Lodge defendants' answer for failure to respond to outstanding discovery requests (SEQ 001). While the motion to strike was pending, the court, by order dated April 11, 2019, granted the parties' application to consolidate Action Nos. 1 and 2 to the extent of joining

them for discovery and trial (SEQ 002). By order dated June 10, 2019, the court denied the motion to strike under SEQ 001, and scheduled a preliminary conference for August 20, 2019. In the resultant preliminary conference order, the court directed that paper discovery, including responses to the RLSS parties' outstanding request for discovery and inspection, be completed by October 15, 2019, and that depositions be completed by December 7, 2019.

By orders dated February 4, 2020, and entered in both Action No. 1 (SEQ 003) and Action No. 2 (no sequence assigned), the court granted the RLSS parties' CPLR 3126 motion to the extent of precluding the Martin Masonic Lodge defendants' from adducing evidence in support of their defenses in Action No. 2 unless they complied with the deadlines set forth in a February 4, 2020 compliance conference order entered in both Action No. 1 and No. 2. In that compliance conference order, the court directed the Martin Masonic Lodge defendants to respond to all outstanding written discovery demands by April 3, 2020 and complete all depositions by May 4, 2020. The court scheduled a status conference in Action No. 2 for May 12, 2020, and fixed the note of issue filing deadline for June 30, 2020.

The courts were shut down on March 17, 2020 as a consequence of the COVID-19 epidemic. All filings in both electronically filed and non-electronically filed cases were suspended on March 22, 2020. Electronic filings resumed on May 5, 2020. On June 10, 2020, the courts were reopened on a limited basis, and non-electronic filing were resumed on that date as well. The status conference that had been scheduled for May 12, 2020 in Action No. 2 was thus adjourned by the court until August 20, 2020. In the resultant status conference order, the court directed as follows:

"on or before October 10, 2020, defendant shall fully respond to the plaintiff's discovery requests dated January 31, 2019 that the defendant had been directed to produce in the February 4, 2020 case management order. As set forth in the February 4, 2020 case management order, should the defendant fail fully to respond to that demand within the time directed herein, its answer shall be stricken. EBTs of all parties shall be conducted on or before October 31, 2020. EBTs shall be conducted remotely, unless all parties stipulate otherwise."

(emphasis added).

On October 10, 2020, the Martin Masonic Lodge defendants finally submitted a response to the RLSS parties' written demand for discovery and inspection, consisting almost entirely of specious objections on the ground of relevance. Instead of producing requested bank records and documents showing deposits and withdrawals from relevant bank accounts, the Martin Masonic Lodge defendants simply set forth a short typewritten schedule of purported check payments, checks made out to "cash," and ATM withdrawals from the relevant accounts. On October 12, 2020, counsel for the Martin Masonic Lodge defendants emailed a message to counsel for the RLSS parties essentially arguing the merits of the dispute, and attaching two partial images of what appear to be cancelled checks. Counsel also exclaimed "I want EBTs!! I want to cross examine your clients. And, my client can't wait for an opportunity to testify and explain things in his own words." Nonetheless, counsel did not propose any date or dates to conduct the EBTs on or before October 13, 2020, nor did he explain why they hadn't been scheduled immediately after the August 20, 2020 conference.

On October 19, 2020, the RLSS parties made the instant motion in Action No. 2 pursuant to CPLR 3126 (SEQ 003) to strike the Martin Masonic Lodge defendants' answer on the grounds that those defendants neither fully responded to written discovery requests nor were available for depositions at any time prior on or before October 31, 2020. The Martin Masonic Lodge defendants have not submitted any opposition to the motion.

CPLR 3101(a) provides that "there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." This language is "interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Osowski v AMEC Constr. Mgt., Inc.*, 69 AD3d 99, 106 [1st Dept 2009], quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406-407 [1968]). CPLR 3126 authorizes a court to sanction parties who "refuse[] to obey an order for disclosure or wilfully fail[] to disclose information which the court finds ought to have been disclosed" (*Kutner v Feiden, Dweck & Sladkus*, 223 AD2d 488, 489

[1st Dept 1998]). A failure to comply with discovery, particularly after a court order has been issued, “may constitute the dilatory and obstructive, and thus contumacious, conduct warranting *the striking of the[] answer[]*” (*id.*; see *CDR Creances S.A. v Cohen*, 104 AD3d 17 [1st Dept 2012]; *Reidel v Ryder TRS, Inc.*, 13 AD3d 170 [1st Dept 2004]). Over the course of two years, the Martin Masonic Lodge defendants, without any excuse, have refused timely and fully to respond to numerous discovery requests and three discovery orders, the latter two of which included explicit warnings that their answer would be stricken should they persist in failing to respond to specific requests. The court concludes that this behavior constitutes a “pattern of noncompliance g[iving] rise to an inference of willful and contumacious conduct” sufficient to warrant the drastic sanction of striking a pleading (*Cooper v Metropolitan Transp. Auth.*, 186 AD3d 1150, 1151 [1st Dept 2020] [failure to comply with seven discovery orders over three-year period]; see *Rodriguez v United Bronx Parents, Inc.*, 70 AD3d 492 [1st Dept 2010] [failure to comply with five orders over two years]; *Goldstein v CIBC World Mkts. Corp.*, 30 AD3d 217, 217 [1st Dept 2006] [year-long pattern of noncompliance with repeated compliance conference orders]; *Reidel v Ryder TRS, Inc.*, 13 AD3d 170 [1st Dept 2004] [failure to comply with three discovery orders over two-year period]).

The Martin Masonic Lodge defendants’ 11th-hour attempt to respond to the document requests and discovery orders in a timely fashion, by serving unsupported blanket objections, does not constitute a good-faith effort to comply with the terms of the discovery orders sufficient to avoid the imposition of sanctions (see *St. Nicholas W. 126 L.P. v Republic Inv. Co., LLC*, 2019 NY Slip Op 32235[U], 2019 NY Misc LEXIS 4178, *16 [Sup Ct, N.Y. County, Jul. 29, 2019]; *Uwechia v City of New York*, 2014 NY Slip Op 30765[U]; 2014 NY Misc LEXIS 1405, *7-11 [Sup Ct, N.Y. County, Mar. 28, 2014]).

In light of the foregoing, the Martin Masonic Lodge defendants are held in default, and their answer is stricken.

“When an answer is stricken and a default entered, the defendant ‘admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damages,’ . . . unless the damages are for a sum certain or a sum which can be made certain by computation”

(*Curiale v Ardra Ins. Co.*, 88 NY2d 268, 279 [1996], quoting *Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730 [1984]; see *Amusement Bus. Underwriters v American Intl. Group*, 66 NY2d 878, 880 [1985]; *Cole-Hatchard v Eggers*, 132 AD3d 718 720 [2d Dept 2015]; *Gonzalez v Wu*, 131 AD3d 1205 1206 [2d Dept 2015]). This action presents the somewhat unusual situation in which some of the damages sought by the RLSS parties appear to be for a sum certain, while other claimed damages are of an as yet undetermined value. The Martin Masonic Lodge defendants are, thus, “entitled to present testimony and evidence and cross-examine the plaintiff[s]’ witnesses at the inquest on damages” (*Minicozzi v Gerbino*, 301 AD2d 580, 581 [2d Dept 2003] [internal quotation marks omitted]; see *Rudra v Friedman*, 123 AD3d 1104, 1105 [2d Dept 2014]; *Toure v Harrision*, 6 AD3d 270, 272 [1st Dept 2004]).

Accordingly, it is hereby,

ORDERED that the defendants Masonic Lodge “Silencio #16 De Don Pedro Martin,” Inc., and Jose Luis Carrion are held in default, and their answer is stricken; and it is further,

ORDERED that, upon the filing of a note of issue for a nonjury trial in connection with this action, the inquest on the issue of damages and other relief in this action will be conducted simultaneously with the trial in the related action entitled *Masonic Lodge “Silencio #16 De Don Pedro Martin,” Inc. v Fraternidad Realty Corp.*, pending in this court under Index No. 655299/2017; and it is further,

ORDERED that the plaintiffs in this action shall serve a copy of this order with notice of entry upon the defendants in this action within 20 days of the entry of this order by electronically filing those documents with the New York State Courts Electronic Filing (NYSCEF) system.

This constitutes the Decision and Order of the court.

1/4/2021
DATE



JOHN J. BELLEY JR. C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: