

Weinberg v March for Science, Inc.
2021 NY Slip Op 30829(U)
March 10, 2021
Supreme Court, New York County
Docket Number: 675335/2019
Judge: Frank P. Nervo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, PART IV

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C. WEINBERG,

Plaintiff,

-against-

MARCH FOR SCIENCE, INC., VALORIE AQUINO,
RUFUS COCHRAN, JUSTIN SHAIFFER, LUCKY TRAN,
MATT TRANCHIN, AND ASTRID WILLIS-COUNTEE

Defendants.
-----X

NERVO, J.

DECISION AND ORDER

Index Number
675335/2019

Mot. Seq. 001

Plaintiff moves for an order, under CPLR § 3126, compelling defendants answer her demands and interrogatories. Defendants oppose, contending relief under § 3126 is improper, as no Court order has been issued. Defendants further oppose, on the basis that no Court conference has been requested or held in this matter.

CPLR § 3101(a) directs that there “shall be full disclosure of all matter material and necessary to the prosecution or defense of an action, regardless of the burden of proof” (*Forman v. Henkin*, 30 NY3d 656, 661 [2018]). The test utilized is “one of usefulness and reason” (*id.*). CPLR § 3124 provides that a party seeking disclosure may move to compel compliance or a response where their demand has gone unheeded. CPLR § 3126 subsection three provides that the Court may strike a pleading when it finds, inter alia, that a party has refused to obey an order for disclosure or willfully fails to disclose information that ought to have been disclosed. This remedy is drastic and should only be imposed when the movant has “clearly shown that its opponent’s

nondisclosure was willful, contumacious or due to bad faith” (*Commerce & Indus. Ins. Co. v. Lib-Com Ltd.*, 266 AD2d 142 [1st Dept 1999]). A pattern of default, lateness and failure to comply with court orders, can give rise to an inference of willful and contumacious conduct (see *Merchants T & F, Inc. v. Kase & Druker*, 19 AD3d 134 [1st Dept 2005]; see also *Shah v. Oral Cancer Prevention Intl., Inc.*, 138 AD3d 722 [2d Dept 2016]).

As an initial matter, the relief sought by movant, compelling responses to her demands, is properly sought under CPLR § 3124, not CPLR § 3126. Consequently, the Court deems the instant motion an application to compel under CPLR § 3124.

The Court notes the sparseness of movant’s papers. Movant does not provide any basis for compelling a response to her demands, or otherwise make a showing that the material requested is relevant and material to the action herein. Instead, the majority of her papers are devoted to ad hominem attacks of defendants and defense counsel. Plaintiff, having failed to provide a basis for any of the material demanded, is not entitled to an order, at this time, compelling disclosure of same. To the extent that plaintiff seeks CPLR § 3126 relief, the same failure to make a showing she is entitled to the documents requested under CPLR § 3124 precludes the sanctions contemplated by CPLR § 3126

Notwithstanding, defendants are not at liberty to ignore a demand, and must respond within 20 days (*see* CPLR § 3120). The Uniform Civil Rules for the Supreme Court require a party's response or objection to a request for documents state with particularity the grounds for any objection to production (22 NYCRR § 202.20-c). Such response must include the grounds for objection, extent of objection, whether any documents have been withheld and the manner in which the objecting/responding party intends to limit the scope of withheld documents (*id.*) Defendants do not dispute that plaintiff's demands went unrequited, in violation of these Rules and the CPLR.

The Court finds the instant motion entirely avoidable, given the movant's failure to request any Court conference in this matter and defendants' failure to timely respond to plaintiff's demands. This motion represents a substantial waste of judicial resources. As the Court of Appeals has repeatedly underscored, "our court system is dependent on all parties engaged in litigation abiding by the rules of proper practice. The failure to comply with deadlines not only impairs the efficient functioning of the courts and adjudication of claims, but it places jurists unnecessarily in the position of having to order enforcement remedies to respond to the delinquent conduct of members of the bar, often to the detriment of the litigants they represent. Chronic noncompliance with deadlines 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 [2010]). Compliance requires a timely response and good faith effort to provide a meaningful response (*Kihl v. Pfeffer*, 94 NY2d 118, 123 [1999]). Disregard of discovery deadlines will not be tolerated (*Andrea v. Arnone, Hedin, Casker, Kennedy*

& Drake, Architects & Landscape Architects, P.C., 5 NY3d 514, 521 [2005]; *see also* *Arpino v. F.J.F. & Sons Elec. Co., Inc.*, 102 AD3d 201, 208 [2d Dept 2012]). Counsels' instant behavior supports sanctions, under the Court Rules and CPLR; however, the Court, in its discretion, will not sanction counsel, at this time.

Accordingly, it is

ORDERED that the motion is denied; and it is further

ORDERED that the parties shall appear for a virtual preliminary conference on April 1, 2021 at 2:15pm via Microsoft Teams; and it is further

ORDERED the parties shall complete a proposed preliminary conference order form, (<https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/PC-Genl.pdf>) to the extent agreement can be reached, and submit same via NYSCEF on or before March 30, 2021; and it is further


ORDERED that the parties shall contemporaneously submit a joint letter, with the proposed preliminary conference order form, and such letter shall outline the discovery and material contemplated by the preliminary conference order upon which the parties cannot reach agreement; and it is further

ORDERED that the parties are reminded of the Part's Rules, available on the Court's website, including rules related to the adjournment of preliminary conferences.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: March 10, 2021

ENTER:



J.S.C.
HON. FRANK P. NERVO
J.S.C.