

Vacharasovan v Macys Inc.
2021 NY Slip Op 30997(U)
March 29, 2021
Supreme Court, New York County
Docket Number: 159065/2018
Judge: J. Machelles Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62

Justice

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INDEX NO. 159065/2018

RACHEL VACHARASOVAN,

Plaintiff,

MOTION DATE 04/07/2020

MOTION SEQ. NO. 002

- v -

MACYS INC, MACYS OF NEW YORK, MACYS PARADE
AND ENTERTAINMENT GROUP, CITY OF NEW YORK,
CITY OF NEW YORK POLICE DEPARTMENT, P.O. JOHN
DOE, P.O. JOHN DOE, P.O. JOHN DOE, P.O. JOHN DOE

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20,
21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32

were read on this motion to/for DISCOVERY.

Pending before the court is an order where defendants Macys Inc, Macys Of New York, and Macys Parade And Entertainment Group (collectively, "Macys") seeks an order dismissing the plaintiff's Summons and Complaint, or in the alternative precluding the plaintiff for failing to serve a Verified Bill of Particulars and responses to the movants' multiple discovery demands or alternatively, preclude the plaintiff if such Verified Bill of Particulars and discovery responses are not served within 30 days after the date of such a conditional order, or direct the plaintiff to comply with the discovery notices and demands; and the cross-motion filed by the City which seeks an Order Pursuant to CPLR § 3126, dismissing the Complaint for plaintiff's failure to serve a Verified Bill of Particulars and responses to movants' multiple discovery demands.

Also pending is a cross-motion where defendants THE CITY OF NEW YORK and NEW YORK CITY POLICE DEPARTMENT (collectively, "the City") seek an order pursuant to

CPLR § 3126, dismissing the Complaint for plaintiff's failure to serve a Verified Bill of Particulars and responses to movants' multiple discovery demands.

This motion was filed over a year ago, on March 13, 2020, prior to the undersigned taking over Part 62. As of today, no opposition has been filed to either the motion or the cross-motion.

On October 29 and October 30, 2020, in response to a courtesy email from the court, Macys and plaintiff each submitted a letter to the court.

The letter from Macy's read, in part:

This correspondence is sent as Macy's position with respect to plaintiff's request for additional time to oppose Macy's pending Motion to Dismiss. This case has a long history of noncompliance by the plaintiff. Initial discovery demands were served on March 29, 2019, a year before the pandemic. We needed to file a motion to compel where an Order was issued on December 23, 2019 ordering the plaintiff to respond to the movants' Demand for a Verified Bill of Particulars and various other discovery demands within 30 days. Still there was no response. Further good faith measures were taken but defendant was forced to file the Motion to Dismiss in March of 2019 shortly before the Court shutdown.

There has been no explanation by plaintiff for his delay in responding BEFORE the pandemic. Also, the Courts have reopened virtually for months now and we have not received any responses. I, of course, typically would provide significant courtesy during these times, but in this case the problems were existing well before the pandemic and my client has now had to pay costs and fees for two motions which would not have been necessary if plaintiff counsel would have merely timely responded a year and a half ago. Therefore, Defendant Macy's objects to any further delay at this time.

The plaintiff's letter read, in part:

This office is hereby requesting further time to respond to defendant's subject pending motion.

The instant motion was filed on March 13 of 2020 during the height of the current Covid-19 crisis.

Our office was "locked down" pursuant to gubernatorial and city directives as "non-essential workers" at that time.

Plaintiff's counsel and staff are in the high risk category of potential susceptible victims to a pandemic that is re-surgng.

I am making this request after being refused the opportunity to file a response by defendant's counsel. (Letter/email filed/dated October 29, 2020)

As and for a schedule on the instant matter, I would apply for a 45-day time period in order to formulate a response followed by a 45-day time period for defendant's counsel to reply and for such further relief as to the Court seems just and proper.

On or around November 4, 2020, the court, over the objection of Macy's, granted plaintiff's request for a 45-day extension, which effectively moved the deadline for opposition filings to December 19, 2020.

On March 12, 2021, in response to a courtesy email from the court, the movant in the motion (Macys) and the movant in the cross-motion, each confirmed that they are still pursuing their respective motions and there had been no resolution of the issues therein. There was no response from the plaintiff.

On March 17, 2021, the court sent a third courtesy email, to which plaintiff's counsel responded:

Thanks so much for the Court's courtesy.

Yes, we are opposing the relief requested and ask for an additional 60 days to respond at which time we anticipate that our office will re-open as we anticipate we will be fully vaccinated against the Covid-19 threat.

As of now, the court finds that this motion has been pending for over a year and other than generally blaming the Covid-19 pandemic, plaintiff fails to explain with any particularity why he failed to file opposition papers, despite the extension of time given by the court, or why he failed to take the initiative to ask for additional time. Importantly, there is also no indication that plaintiff took any steps to resolve the issues therein.

Accordingly, the court DENIES plaintiff's request for a further extension, and GRANTS the motion and cross-motion to the following extent:

IT IS HEREBY ORDERED THAT plaintiff is directed, within 30 DAYS of the date of this order, to (1) strictly comply with the any and all discovery notices and demands served by Macys or by the City; (2) serve a Verified Bill of Particulars and responses to movants' multiple discovery demands.

If plaintiff fails to do as directed, this action may be dismissed with prejudice for failure to prosecute.

3/29/2021
DATE



J. MACHELLE SWEETING, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE