

Metromotion Prods., Inc. v Good Light Studio, Inc.

2021 NY Slip Op 31455(U)

April 22, 2021

Supreme Court, New York County

Docket Number: 150804/2018

Judge: Shawn T. Kelly

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 57

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METROMOTION PRODUCTIONS, INC., A NEW YORK
BUSINESS CORPORATION, DAYLIGHT STUDIO, L.L.C.,
A NEW YORK LIMITED LIABILITY COMPANY, AND
INDIVIDUAL AND AS ASSIGNEE OF FIREMANS FUND
INSURANCE COMPANY,

Plaintiff,

- v -

GOOD LIGHT STUDIO, INC., A NEW YORK BUSINESS
CORPORATION, GOOD LIGHT STUDIO 2, LLC, A NEW
YORK LIMITED LIABILITY COMPANY, JAMES
GALLOWAY, STUDIO WITH A VIEW, INC., A NEW YORK
BUSINESS CORPORATION, ROBERT F. STUART & CO.
INC., 450 WEST 31ST OWNERS CORP., A NEW YORK
BUSINESS CORPORATION

Defendant.

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INDEX NO. 150804/2018

MOTION DATE 01/04/2021,
01/04/2021

MOTION SEQ. NO. 006 008

**DECISION + ORDER ON
MOTION**

HON. SHAWN TIMOTHY KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 175, 176, 177, 178, 179, 180, 181

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 008) 173, 182, 183, 184, 185, 186, 187, 188

were read on this motion to/for DISMISS

Upon the foregoing documents, it is

Defendants move (1) pursuant to CPLR §3126(3) to dismiss plaintiffs' claim for property damage due to their refusal to comply with a Court order and/or inability to produce any admissible evidence showing that plaintiff incurred damages due to a water damage leak, or in the alternative, directing plaintiff to comply with a Court order dated February 22, 2020; and (2)

for an order directing plaintiff to fully respond to defendants Notice for Discovery and Inspection demanding information pertaining to plaintiffs'

business interruption claim.

Defendants Robert F. Stuart & Co., Inc and 450 West 31st Owners Corp., move under motion sequence 006 and defendants Good Light Studio, Inc., and Good Light Studio 2, LLC move under motion sequence 008, for identical relief. Accordingly, both motions are consolidated for decision.

Background

Plaintiffs allegedly sustained property damage and loss of business as a result of water damage on February 1, 2015 as a result of a frozen pipe in the wall of the building they lease. Specifically, Plaintiffs allege that as a result of the flood the contents of their studio, including electronic equipment, furniture, and other supplies necessary for Plaintiffs to conduct their business were ruined. Plaintiffs also allege that they had substantial loss of business income due to damage to the units' structural improvements and betterments.

Subsequently, Plaintiffs filed and settled a claim with Fireman's Fund Insurance Company, their first party insurer. The settlement included an assignment of its rights, interest, and claim(s) against third party defendants to Plaintiffs in the amount of \$762,527.70. This assignment plus additional damages, including a substantial loss of business and income, constitute the instant litigation.

Analysis

There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action (*see* CPLR § 3101(a); *see also* *Osowski v. AMEC Constr. Mgt., Inc.*, 69 AD3d 99, 106, 887 N.Y.S.2d 11 [1st Dept. 2009]). "Material and necessary has long been

interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial” (see *Forman v. Henkin* 139 A.D.3d 529, 22 N.Y.S. 3d178 [1st Dept. 2015]).

The criterion for establishing whether a complaint should be dismissed pursuant to CPLR §3126 is whether the conduct rises to the level of being willful and contumacious. “[I]n furtherance of the policy favoring resolution of actions on the merits, the drastic remedy of striking a party's pleadings should only be imposed when the discovery noncompliance was willful, contumacious or in bad faith.” (See *Postel v. N.Y. Univ. Hosp.*, 262 A.D.2d 40, 42, 691 N.Y.S.2d 468 [1st Dept. 1999]). Willful, contumacious, or conduct that is in bad faith is described as “[a] pattern of default, lateness and failure to comply with court orders, can give rise to an inference of willful and contumacious conduct” (see also *Merchants T & F, Inc. v. Kase & Druker*, 19 A.D3d 134, 796 N.Y.S 2d 343 [1st Dept. 2005]).

Defendants contend that plaintiffs have failed to provide invoices or receipts for their property damage claims in violation of the status conference order dated February 13, 2020, which directed plaintiff to respond to defendant 450 West’s post EBT demand within twenty (20) days. There have been no further discovery conferences, nor has a Note of Issue been filed.


Defendants have not demonstrated that plaintiffs have acted willfully or in bad faith in failing to provide receipts for the property damage alleged. Accordingly, Defendants’ motion is denied.

Accordingly, it is hereby

ORDERED that Defendants’ motion to dismiss plaintiffs’ claim for property damage is denied; and it is further

ORDERED that counsel are directed to appear for a remote status conference, via Microsoft Teams, link to be provided by the Part Clerk, on June 24, 2021 at 12:30 PM.

4/22/2021
DATE


SHAWN TIMOTHY KELLY, 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