

**Minico Ins. Agency, LLC v Barnhart  
Restoration-Preserv. Design Corp.**

2021 NY Slip Op 32659(U)

December 14, 2021

Supreme Court, New York County

Docket Number: Index No. 450192/2021

Judge: Arlene P. Bluth

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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. ARLENE BLUTH PART 14

*Justice*

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MINICO INSURANCE AGENCY, LLC, AS AGENT FOR  
THE HUDSON EXCESS INSURANCE COMPANY,

Plaintiff,

INDEX NO. 450192/2021

MOTION DATE 12/14/2021

MOTION SEQ. NO. 001

- v -

BARNHART RESTORATION-PRESERVATION DESIGN  
CORP.,

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

BARNHART RESTORATION-PRESERVATION DESIGN  
CORP.,

Third-Party Plaintiff,

-v-

RELIABLE INSURANCE SERVICES, LLC,

Third-Party Defendant,

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 50-67,  
were read on this motion to/for RESTORE.

The motion by plaintiff to restore this action and vacate this Court's dismissal order is denied.

On March 9, 2021, this Court sent out a notice directing the parties to take one of three actions concerning discovery (NYSCEF Doc. No. 40). They could 1) upload a discovery stipulation signed by all parties, 2) upload a stipulation of partial agreement or 3) file any communication explaining why no agreement concerning discovery could be reached. Plaintiff ignored this directive and so the conference (scheduled for April 2, 2021) was adjourned.

The Court filed a second Court notice with the same instructions and required that plaintiff take action on or before July 13, 2021 (a week before the next conference) (NYSCEF

Doc. No. 41). Again, plaintiff ignored the Court and so the conference was adjourned a second time. The Court sent out a third notice and directed that something be submitted by October 6, 2021 (NYSCEF Doc. No. 42). This notice warned that “If you fail to submit one of the above by October 6, 2021, your case will be dismissed” (*id.*). The Court observes that each of the three notices at issue specifically and clearly warned that the failure to submit something for three consecutive conferences would result in dismissal.

Despite these clear warnings, plaintiff did nothing and so the Court dismissed the case on October 7, 2021 (NYSCEF Doc. No. 43). On October 18, 2021, plaintiff finally awoke from its slumber and decided to send a letter asking the Court to vacate the dismissal order. Plaintiff then filed the instant motion and insists that the attorney assigned to the case is no longer with counsel for plaintiff’s firm. Plaintiff’s counsel acknowledges that the case should have been moved and now attaches a proposed preliminary conference order.

Unfortunately, plaintiff did not raise a reasonable excuse for ignoring this Court for seven months. It only offers a vague allusion to the fact that the attorney assigned to the case is no longer with the firm. In fact, in reply, counsel for plaintiff admits that he “recorded representation in this matter when the attorney handling this matter was leaving the firm . . . but did not change the assignment of this case in our calendar system because I thought the assignment to me would be temporary” (NYSCEF Doc. No. 66, ¶ 3).

In other words, at some unspecified time, counsel for plaintiff took over the case and then ignored it, just as the attorney previously assigned to the case had done. That is not a reasonable excuse sufficient to vacate the dismissal order. The Court recognizes that sometimes cases get overlooked and conferences (and Court directives) get missed. That is why the Court gave plaintiff three chances over the course of seven months to do something about this case. The

Court drafted three notices and scheduled three conferences; each time, plaintiff ignored the Court. That justifies dismissing this case (*New York Dangerous LLC v Librot*, 2021 NY Slip Op 06811, 1 [1st Dept 2021] [denying a motion to vacate where the trial court dismissed a case based on plaintiff's failure to appear at two conferences pursuant to 22 NYCRR 202.27]).

Plaintiff's attempt to blame defendant for not taking certain actions is misplaced. This is plaintiff's case—it is plaintiff's burden to move its case. It cannot ignore three consecutive conferences and then blame other parties for its failures. And, of course, all plaintiff had to do to avoid dismissal was upload something (anything) in advance of one of the three scheduled conferences. Plaintiff chose not to do so. Instead, plaintiff waited until after this Court dismissed the case to finally pay attention. The Court observes that this is an e-filed case and plaintiff's counsel received a notification each time the Court uploaded a notice directing plaintiff to do something.

This part's discovery system is designed to make it more convenient and efficient for litigants and their attorneys. Before the pandemic, attorneys would often spend a morning or afternoon meeting in the hallway to discuss discovery issues. In-person appearances were required even if the parties already agreed. Now, parties are directed to work out discovery disputes at their convenience before the conference. If they reach an agreement, then there is no need for a conference. However, if there are issues, the Court will schedule a specific time so that these disputes can be resolved. If Court intervention is required, they can simply appear at their appointed time.

This system requires only minimal effort by the parties. All that is required is the submission of something, anything, at least a week before the scheduled conference. Even a letter explaining why no discovery stipulation can be signed is enough. Here, plaintiff ignored

the Court for seven months despite three notices directing it to take action and clear warnings that the failure to do something would result in dismissal. Plaintiff simply failed to cite a reasonable excuse for ignoring this Court.

Accordingly, it is hereby

ORDERED that the motion by plaintiff to vacate this Court's order dismissing this case is denied.



12/14/2021  
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE