

Crudele v Price

2021 NY Slip Op 33946(U)

March 1, 2021

Supreme Court, Suffolk County

Docket Number: Index No. 608551/2020

Judge: Martha L. Luft

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 608551/2020

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - COUNTY OF SUFFOLK

P R E S E N T:

Hon. Martha L. Luft
Acting Justice Supreme Court

**Hearing on Sanctions -
April 22, 2021**

DECISION AND ORDER
CASEDISP

GERARD J. CRUDELE, x

Plaintiff,

-against-

JENNIFER C. PRICE, SMITHTOWN FIRE
DEPARTMENT, MICHAEL CARUSO and
LORRAINE CARUSO,

Defendants.
_____ x

Mot. Seq. No.: 001 - Mot.D
Orig. Return Date: 09/01/2020
Mot. Submit Date: 09/29/2020

Mot. Seq. No.: 002 - Mot.D
Orig. Return Date: 09/01/2020
Mot. Submit Date: 09/29/2020

PLAINTIFF'S ATTORNEY

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New York, NY 10004

Upon the e-filed documents numbered 8 through 28, 30 through 44, and 48 through 59,
it is

ORDERED that the motions by the defendants Michael Caruso, Lorraine Caruso,

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Jennifer Price, and Smithtown Fire Department are hereby consolidated for the purposes of this determination; it is further

ORDERED that the motion (#001) by the defendants Michael Caruso and Lorraine Caruso for, *inter alia*, an order dismissing the complaint as asserted against them and imposing sanctions upon the plaintiff is granted to the extent of dismissing the complaint as against them and referring the request for sanctions to a hearing; it is further

ORDERED that the motion (#002) by the defendants Jennifer Price and Smithtown Fire Department for, *inter alia*, an order dismissing the complaint as asserted against them and imposing sanctions upon the plaintiff is granted to the extent of dismissing the complaint as against them and referring the request for sanctions to a hearing; it is further

ORDERED that the portions of the defendants' motions seeking an order imposing sanctions upon the plaintiff is granted to the extent that the parties' counsel shall appear before the undersigned on **April 22, 2021 at 2:30 pm via Microsoft Teams** for a hearing to determine what, if any, sanctions are appropriate, and all parties shall provide an email address to chambers no less than two business days prior to the hearing.

This is an action to recover damages for personal injuries allegedly sustained as a result of a motor vehicle accident that occurred on October 5, 2015 while the plaintiff Gerard Crudele was a passenger in an ambulance. A prior action seeking the same relief was filed on January 12, 2016 under Index Number 600446/2016 ("the 2016 action"). It is uncontroverted that the instant action involves the same parties and arises out of the same set of facts and circumstances as the 2016 action. By order dated April 30, 2019, this Court noted the plaintiff's default at a scheduled court conference on the record and granted an application by the defendants to dismiss the complaint, pursuant to 22 NYCRR § 202.27 (b). By order dated January 17, 2020, this Court denied a motion by the plaintiff to restore the 2016 action to the calendar, finding, among other things, that the plaintiff's failure to appear in April 2019 was part of a pattern of repeated neglect in proceeding with the matter, and as such, the default could not be excused. Although the plaintiff filed a notice of appeal of the January 2020 order with the Appellate Division, Second Department, by order dated September 2, 2020, that Court denied a motion by the plaintiff to extend the time to perfect the appeal, without prejudice to renew upon a showing of extreme hardship.

On July 8, 2020, the plaintiff filed the instant action. The defendants Michael Caruso and Lorraine Caruso ("the Caruso defendants") now move for an order dismissing the complaint as time-barred, pursuant to CPLR 3211 (a)(5), arguing that the three-year statute of limitations has run on the plaintiff's negligence cause of action. The defendants Jennifer C. Price and Smithtown Fire Department ("the Fire Department defendants") also move for an order dismissing the complaint on the same basis, as well as there being a prior pending action, pursuant to CPLR 3211 (a)(4). In addition, all the defendants seek an order imposing sanctions on the plaintiff for

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engaging in frivolous conduct, pursuant 22 NYCRR § 130-1.1. In support of their motion, the Caruso defendants submit, among other things, copies of the April 2019 and January 2020 orders, a memorandum of law, and an affirmation of their attorney. In support of their motion, the Fire Department defendants submit, among other things, an affirmation of their attorney. The plaintiff opposes both motions, arguing, *inter alia*, that the instant action is not time-barred, as CPLR 205 (a) allows for a six-month extension of time to re-file an action that was dismissed, and that sanctions are not warranted, as the plaintiff has not engaged in any frivolous conduct. In opposition, the plaintiff submits several documents, including an affirmation of his attorney. In reply, the Caruso defendants and the Fire Department defendants submit affirmations of their attorneys.

CPLR 205 (a) provides, in relevant part, that a plaintiff may have an additional six months to file a new action if a prior timely filed action was dismissed for reasons other than voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits. In particular, CPLR 205 (a) directs that, where a dismissal is based upon a neglect to prosecute, the judge shall set forth on the record the specific conduct constituting the neglect and demonstrating a general pattern of delay in proceeding with the litigation. In the April 2019 order, the undersigned detailed many instances of specific conduct by the plaintiff's counsel which evinced a pattern of delay in proceeding with the litigation (*see* CPLR 205 [a]), and the Court denied a motion by the plaintiff to restore the 2016 action to the calendar on this basis by the January 2020 order.

A dismissal under 22 NYCRR § 202.27 may serve as a basis for exclusion under CPLR 205 (a) under the proper circumstances, as the neglect to prosecute exception under the statute applies not only to CPLR 3216 dismissals, but also to cases where neglect to prosecute is the underlying basis for dismissal (*see Andrea v Arnone, Hedin, Casker, Kennedy & Drake, Architects & Landscape Architects, P.C.*, 5 NY3d 514, 519, 806 NYS2d 453 [2005]; *Marrero v Crystal Nails*, 114 AD3d 101, 978 NYS2d 257 [2d Dept 2013]). Here, by the April 2019 order, the Court clearly articulated that the reason for dismissal of the 2016 action was not only due to the plaintiff's counsel's failure to appear for a scheduled court conference (*see* 22 NYCRR § 202.27 [b]), but because this failure was part of a general pattern of delay in proceeding with the litigation (*see* CPLR 205 [a]; *Andrea v Arnone, Hedin, Casker, Kennedy & Drake, Architects & Landscape Architects, P.C.*, *supra*; *Marrero v Crystal Nails*, *supra*). As such, the plaintiff is not entitled to the six-month extension to file a new action under CPLR 205 (a), and as he commenced the instant action more than three years after the subject accident in October 2015 (*see* CPLR 214 [5]), the defendants' submissions establish their entitlement to an order dismissing the complaint in its entirety as time-barred (*see* CPLR 3211 [a][5]; *Andrea v Arnone, Hedin, Casker, Kennedy & Drake, Architects & Landscape Architects, P.C.*, *supra*; *Marrero v Crystal Nails*, *supra*). In light of this determination, the Court need not address whether the defendants are entitled to dismissal of the complaint pursuant to CPLR 3211 (a)(4).

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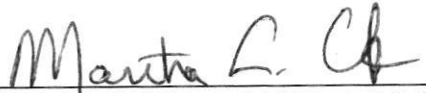
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As to the portions of the defendants' motions for an order imposing sanctions on the plaintiff for his allegedly frivolous conduct, a court, in its discretion, may impose financial sanctions against a party or attorney who engages in frivolous conduct after affording him or her a reasonable opportunity to be heard (*see* 22 NYCRR 130-1.1[a], [d]; *Merchant Cash & Capital, LLC v Blueshyft, Inc.*, 175 AD3d 603, 104 NYS3d 907 [2d Dept 2019]). Here, the Court finds that the facts and allegations before it warrant a hearing to determine whether sanctions are appropriate, and if so, the nature of such sanctions.

Accordingly, the defendants' motions are granted in part, and denied in part.

E N T E R

Date: ~~February~~ ^{March} 1, 2021
Riverhead, New York


HON. MARTHA L. LUFT, A.J.S.C.

 X Final Disposition

 Non-Final Disposition