

**Echegaray v City of New York**

2021 NY Slip Op 34162(U)

February 23, 2021

Supreme Court, Queens County

Docket Number: Index No. 702296/2018

Judge: Tracy Catapano-Fox

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The following papers numbered 1 to 7 were read on this motion by third-party defendants TENZING LEGDHEN, TENZIN LHAMO, and SONAM WANGCHUK to strike plaintiff Roberto Echegaray’s Complaint pursuant to CPLR §3126, or in the alternative, compel plaintiff Roberto Echegaray to comply with discovery demands or be precluded from offering evidence at trial pursuant to CPLR §§ 3124 and 3126.

Papers  
Numbered

Third-Party Defendants’ Notice of Motion, Affirmation, Exhibits .....1-4  
Plaintiff Roberto Echegaray’s Affirmation in Opposition, Exhibits.....5-7

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Third-party Defendants’ TENZING LEGDHEN, TENZIN LHAMO, and SONAM WANGCHUK’s motion to strike plaintiff Roberto Echegaray’s Complaint, or in the alternative, preclude plaintiff Roberto Echegaray from offering any evidence at trial to CPLR §3126 is granted, solely to the extent that plaintiff Roberto Echegaray must comply with third-party defendant’s outstanding discovery demands seeking a Verified Bill of Particulars, outstanding authorizations, expert and other witness information and collateral source information, within thirty (30) days from the date of this Order with Notice of Entry. The nature and degree of a penalty to be imposed pursuant to CPLR §3126 lies within the trial court’s discretion. (*Lucas v. Stam*, 147 AD3d 921 [2<sup>nd</sup> Dept. 2017]. However, the striking of a pleading is a drastic remedy that may only be warranted upon a clear showing that the failure to comply with discovery demands was willful and contumacious. (*Id.*; see also *Lazar, Sanders, Thaler & Assoc. LLP v. Lazar*, 131 AD3d 1133 [2<sup>nd</sup> Dept. 2015].)

Third-party Defendants demonstrated that plaintiff Echegaray failed to respond to all outstanding discovery demands, through documentary evidence of communications it sent to plaintiff Echegaray’s counsel seeking the requested discovery. In opposition, plaintiff Echegaray submitted a letter dated January 8, 2021, stating he responded to third-party defendants’ discovery demands on November 16, 2020. Plaintiff Echegaray asserts that he responded to third-party defendants’ Demand for Discovery and Inspection dated November 2, 2020 with two color photographs that were attached to his Notice of Claim and marked as exhibits at his 50h hearing held on December 20, 2017, as well as duly executed HIPAA compliant authorizations to obtain medical records from Roosevelt Family Chiropractic and Dr. Mehrzad J. Kohansieh. Based upon the evidence presented, third-party defendants demonstrated plaintiff Echegaray did not respond to all of their discovery demands but failed to establish plaintiff Echegaray’s noncompliance was willful or contumacious.


Accordingly, third-party defendants’ motion is granted, solely to the extent that plaintiff Echegaray must provide outstanding discovery within thirty (30) days from the date of this Order



with Notice of Entry. Failure to comply with the above may result in preclusion of plaintiff Echegaray offering evidence at trial.

The foregoing constitutes the decision and order of the Court.

Dated: February 23, 2021

  
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Tracy A. Catapano-Fox, J.S.C.