

Melikov v 66 Overlook Terrace Corp.

2022 NY Slip Op 31121(U)

April 6, 2022

Supreme Court, New York County

Docket Number: Index No. 153504/2018

Judge: Arlene 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

-----X

BAKHTIYOR MELIKOV, NICOLOV MELIKOV,
Plaintiffs,

INDEX NO. 153504/2018

MOTION DATE 04/05/2022

MOTION SEQ. NO. 005 006

- v -

66 OVERLOOK TERRACE CORP., PATRIOT PLUMBING
AND HEATING INC., OMAR FAKHOURY, TUDOR REALTY
SERVICES, CORP.,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

66 OVERLOOK TERRACE CORP.

Third-Party
Index No. 595283/2019

Plaintiff,

-against-

OMAR FAKHOURY

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 005) 118, 119, 120, 121, 122, 123, 124, 125, 126

were read on this motion to/for VACATE - DECISION.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 105, 106, 107, 108, 109, 110, 111, 112, 113

were read on this motion to/for VACATE - DECISION.

Motion Sequence Numbers 005 and 006 are consolidated for disposition.

The motion (MS005) by plaintiffs to vacate this Court's order dated March 2, 2022 dismissing this case is denied. The motion (MS006) by plaintiffs for a consolidation order is denied.¹

¹ The Court observes that although the notice of motion for MS006 seeks consolidation, the supporting papers seem to be an identical copy of the papers filed in support of MS005 and so the Court will treat this motion as one to vacate the dismissal order as well.

On September 24, 2021, this Court issued a discovery order that directed the parties to upload an update regarding discovery by October 28, 2021 (NYSCEF Doc. No. 101). The parties could submit 1) a fully executed stipulation, 2) a stipulation of partial agreement or 3) a letter identifying the areas in dispute (*id.*). This order noted that the failure to upload anything would result in an adjournment of the conference scheduled for the following week and that ignoring three consecutive conference notices would result in dismissal of the case (*id.*).

Nothing was uploaded by the deadline and so the conference was adjourned to January 25, 2022 (NYSCEF Doc. No. 102). The Court issued a notice warning that the failure to upload a discovery update by January 18, 2022 (a week prior to the conference) would result in an adjournment of the conference and that the case would be dismissed in the event three consecutive notices were ignored (*id.*).

When the parties ignored the Court yet again, the Court issued another notice adjourning the conference to March 8, 2022 and setting a deadline of March 1, 2022 for the parties to upload a discovery update (NYSCEF Doc. No. 103). This notice explicitly warned that dismissal might result if nothing was submitted by the deadline (*id.*). Of course, that is what happened here and the Court dismissed the case on March 2, 2022 (NYSCEF Doc. No. 104).

Plaintiffs now move to vacate that dismissal order. They claim that they misread the January 20, 2022 order adjourning the conference to March 8, 2022 and thought documents had to be uploaded by March 8, 2022 instead of March 1, 2022. Plaintiffs explain they have been prosecuting this case and that this error should not result in dismissal. They acknowledge they previously uploaded discovery stipulations on March 5, 2021, February 24, 2021 and December 31, 2020.

The Court denies these motions (which seek the same relief). The fact is that plaintiffs did not bother to address the fact that they ignored the first two conferences scheduled by the Court. There is no doubt that counsel for plaintiffs received emails about this case from the Court. This Court scheduled two conferences, one in November 2021 and one in January 2022, and plaintiffs ignored both conferences and did not offer an excuse for missing either of these conferences. In total, plaintiffs ignored this case for nearly six months (from September 2021 to March 2022) and missed three consecutive conferences. Nothing was uploaded during this time period at all. Without a reasonable excuse for this pattern of delay and abandonment, the dismissal is justified (*Langomas v City of New York*, 152 NYS3d 802, 2021 NY SlipOp 05776 [1st Dept 2021] [affirming the denial of a motion to vacate where plaintiff failed to appear for multiple conferences]).

Moreover, the excuse that plaintiffs offer for missing the last conference strains credulity. The Court issued multiple and identical discovery notices regarding discovery throughout this case prior to the three notices at issue here (*see e.g.*, NYSCEF Doc. No. 85 [February 2, 2021 notice]; NYSCEF Doc. No. 93 [June 11, 2021 notice]). Each notice gave a conference date and set a deadline of a week prior to upload a discovery update. In other words, the Court does not understand how plaintiffs could suddenly misread an unambiguous notice that had been sent throughout this case. The notice that plaintiffs allegedly misread could not be clearer that they had to upload something by March 1, 2022.

This is not a situation where it is unclear whether counsel for plaintiff understood this Court's discovery procedure. Rather, it seems that counsel for plaintiff decided to ignore the Court for months only to suddenly spring into action and make the instant motion *two days after*

the Court dismissed the case. Clearly, plaintiff was capable of taking action and for whatever reason decided to ignore the Court.

Accordingly, it is hereby

ORDERED that the motions by plaintiff (MS005 and MS006) to vacate this Court's order dismissing this case are both denied.



4/6/2022
DATE

ABLENE BLUTH, 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