

Tao Liu v Sobin Chang
2022 NY Slip Op 31932(U)
June 16, 2022
Supreme Court, New York County
Docket Number: Index No. 656209/2020
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

TAO LIU,

Plaintiff,

- v -

SOBIN CHANG,

Defendant.

-----X

INDEX NO. 656209/2020

MOTION DATE 01/21/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for DISCOVERY.

Plaintiff moves to compel defendant’s response to its discovery demands or to strike defendant’s answer for failure to comply with the prior order of this Court. The motion is unopposed.

As relevant here, on plaintiff’s prior motion for a default judgment (mot. seq. 001), the Court deemed defendant’s letter/opposition an application seeking to compel acceptance of defendant’s late answer. Thereafter, the Court granted defendant’s motion to compel a late answer and directed the parties to appear for a conference on December 1, 2021. Defendant failed to appear at that conference, and the Court, in its discretion, issued a preliminary conference order in defendant’s absence, rather than strike defendant’s answer pursuant to 22 NYCRR § 202.27. The Court’s preliminary conference order was

unequivocal, and required all parties serve courtesy copies of any unanswered demands within 14 days, and required all parties respond to any courtesy copy demands within 20 days of receipt (NYSCEF Doc. No. 39 at ¶ 6b). The preliminary conference order further advised that the failure to timely respond to a timely demand would result in sanctions, including the striking of pleadings. Despite being served with a courtesy demand by plaintiff, and a further letter of good faith, defendant failed to respond (NYSCEF Doc. Nos. 40 & 41).

CPLR § 3126 subsection three provides that the Court may strike a pleading when it finds, inter alia, that a party has refused to obey an order for disclosure or willfully fails to disclose information that ought to have been disclosed. This remedy is drastic and should only be imposed when the movant has “clearly shown that its opponent’s nondisclosure was willful, contumacious or due to bad faith” (*Commerce & Indus. Ins. Co. v. Lib-Com Ltd.*, 266 AD2d 142 [1st Dept 1999]). A pattern of default, lateness, and failure to comply with court orders can give rise to an inference of willful and contumacious conduct (*see Merchants T & F, Inc. v. Kase & Druker*, 19 AD3d 134 [1st Dept 2005]); *see also Shah v. Oral Cancer Prevention Intl., Inc.*, 138 AD3d 722 [2d Dept 2016]).

As the Court of Appeals has repeatedly underscored, “our court system is dependent on all parties engaged in litigation abiding by the rules of proper practice ... Chronic noncompliance with deadlines breeds disrespect for the dictates of the Civil Practice law and Rules and a culture in which cases can linger for years without resolution” (*Gibbs v. St. Barnabas Hosp.*, 16 NY3d 74 [2010]). Compliance requires a timely response and good faith effort to provide a meaningful response (*Kihl v. Pfeffer*, 94 NY2d 118, 123 [1999]). Disregard of discovery deadlines will not be tolerated (*Andrea v. Arnone, Hedin, Casker, Kennedy & Drake, Architects & Landscape Architects, P.C.*, 5 NY3d 514, 521 [2005]; *see also Arpino v. F.J.F. & Sons Elec. Co., Inc.*, 102 AD3d 201, 208 [2d Dept 2012]). “[U]pon learning that a party has repeatedly failed to comply with discovery orders, [trial courts] have an affirmative obligation to take such additional steps as are necessary to ensure future compliance” (*Figdor v. City of New York*, 33 AD3d 560, 561 [1st Dept 2006]).

Here, defendant failed to appear for a preliminary conference, as ordered by the Court’s decision on mot. seq. 001 and, thereafter, failed to comply with the preliminary conference order. Consequently, defendant has an established history of failing to comply with Court orders and the Uniform Rules regarding discovery demands. Notwithstanding defendant’s pro-se status, “a pro se

litigant acquires no greater rights than those of any other litigant and cannot use such status to deprive defendant of the same rights as other defendants” (*Stewart v. ARC Development, LLC*, 138 AD3d 413 [1st Dept 2016] quoting *Brooks v. Inn at Saratoga Ass’n*, 188 AD2d 921 [3d Dept 1992]; see also *Davis v. Mutual of Omaha Ins. Co.*, 167 AD2d 714 [3d Dept 1990]). Furthermore, the Court’s prior orders were designed to ensure future compliance and facilitate the completion of discovery; however, such orders were unsuccessful, and defendant has continued to flout discovery obligations and orders of this Court. The Court therefore finds that defendant has engaged in a pattern of willful and contumacious noncompliance designed to substantial delay this matter. Further supporting this finding of willful and contumacious conduct is defendant’s failure to appear on this motion (*Figiel v. Met Food*, 48 AD3d 330 [1st Dept 2008]).

The Court’s prior order was clear, failure of any party to timely respond to demands would result in sanctions, including striking of pleadings. “A party that permits discovery to ‘trickl[e] in [with a] cavalier attitude should not escape adverse consequence” (*Henderson-Jones v. City of New York*, 87 AD3d 498, 504 [1st Dept 2011] quoting *Figdor v. City of New York*, 33 AD3d 560, 561 [1st Dept 2006]).

Accordingly, it is

ORDERED that the motion is granted and defendant's answer, including affirmative defenses and counterclaims, is stricken and defendant is prohibited from introducing evidence at trial; and it is further

ORDERED and ADJUDGED that plaintiff TAO LIU shall have default judgment as to liability on all causes of action set forth in the complaint against defendant SOBIN CHANG and that plaintiff shall have execution therefor in an amount to be determined at inquest; and it is further

ORDERED that decision is reserved to the trial judge on that branch of the motion seeking reasonable attorney's fees associated with the instant motion to be determined the Court at the time of trial; and it is further

ORDERED that plaintiff shall file a note of issue within 30 days of this decision and order; and it is further

ORDERED that if plaintiff's note of issue seeks a non-jury inquest, plaintiff shall so inform the Part-Clerk by email ([SFC-Part4](#))

Clerk@nycourts.gov) contemporaneously with filing of the note of issue and the matter shall be placed on the calendar of this Part for inquest.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

6/16/2022
DATE


HON. FRANK P. NERVO

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	J.S.C.
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE