

**GC Eng Engr. Assoc., P.C. v Goshow Architects,
L.L.P.**

2022 NY Slip Op 33224(U)

September 22, 2022

Supreme Court, New York County

Docket Number: Index No. 654771/2020

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

GC ENG ENGINEERING ASSOCIATES, P.C.

Plaintiff,

- v -

GOSHOW ARCHITECTS, L.L.P.,

Defendant.

-----X

INDEX NO. 654771/2020

MOTION DATE N/A

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69

were read on this motion to/for STRIKE PLEADINGS.

Defendant's motion, brought by order to show cause, to strike the complaint is granted.

Background

This is defendant's second motion to strike plaintiff's complaint. Previously, defendant moved (MS002) to strike the complaint on the ground that plaintiff had not complied with various discovery demands. Plaintiff waited until defendant made that motion to produce nearly 1,000 pages of documents. In a decision dated July 20, 2022, the Court declined to strike the complaint but stressed that the time for games was over and directed plaintiff to produce relevant emails with defendant as well as with the project owners for the construction projects referenced in the complaint (NYSCEF Doc. No. 47 at 2). The deadline for this production was September 1, 2022.

The Court also required that the parties update the Court about the status of discovery by September 6, 2022. On that date, counsel for defendant submitted a letter insisting that plaintiff

had not produced anything since Court order (NYSCEF Doc. No. 50). Defendant then brought the instant order to show cause to strike.

The Court set a deadline in the order to show cause of September 20, 2022 by 5 p.m. for plaintiff to submit opposition. Plaintiff did not comply with that deadline. Instead, plaintiff waited until 10:57 p.m. to upload an opposition. In this opposition, counsel for plaintiff asserts that during the week of August 29, 2022, he was “preoccupied with an arbitration hearing” and was out of the office on September 2, 2022 (NYSCEF Doc. No. 67 at 2). He insists that on September 2, 2022, counsel for defendant emailed him to inquire about the outstanding discovery and that he eventually responded on September 6, 2022 (when he returned to the office).

Counsel for plaintiff argues he asked for an extension of the production deadline and that defendant’s attorney refused to consent. He claims he produced all outstanding documents on September 20, 2022.

Discussion

The Court grants the order to show cause and strikes the complaint. As an initial matter, the Court declines to consider the opposition, which was not timely filed. And, even if the Court could consider it, the opposition actually supports granting the motion to strike the complaint.

The Court’s decision from July 20, 2022 set a clear deadline of September 1, 2022 for plaintiff to produce the discovery at issue in motion sequence 002. Plaintiff admits it ignored that deadline and, shockingly, asked for an extension of time from defendant to produce the discovery on September 6, 2022, *five days after* the deadline. Completely absent from the opposition is what happened from July 20, 2022 until September 6, 2022. That counsel for

plaintiff had an arbitration hearing on August 29, 2022 is not a catch-all excuse for the prior weeks.

Plaintiff could have, but did not, try to obtain a stipulation from defendant and approval from the Court to extend its time to produce the discovery *before* the September 1, 2022 deadline. It could have brought an order to show cause to extend the deadline, but it did not. Instead, plaintiff ignored the deadline and then, despite this Court's previous order saying the time for games was over, again waited until after defendant brought this motion to purportedly produce outstanding discovery. The Court cannot condone this litigation tactic, which makes a mockery of the discovery process.

“The drastic remedy of striking a pleading is warranted where the party's failure to comply with court-ordered discovery is willful and contumacious. The willful and contumacious character of a party's conduct can be inferred from the party's repeated failure to comply with discovery demands or orders without a reasonable excuse” (*Commisso v Orshan*, 85 AD3d 845, 845, 925 NYS2d 612 [2d Dept 2011] [citations omitted]).

Here, plaintiff refused to turn over discovery as contemplated in a discovery stipulation and order dated March 14, 2022 (NYSCEF Doc. No. 39), which prompted defendant to make a discovery motion. Only then did plaintiff partially comply with its obligations, although it did not fully comply and so the Court ordered plaintiff to produce the outstanding discovery by a date certain. Plaintiff ignored that deadline, did not properly respond to defendant's inquiries about the status of its production and forced defendant to make another motion. Then plaintiff ignored the deadline to file opposition and tried, at the very last minute, to produce discovery. No reasonable excuse was cited to justify this pattern of delay. Court orders and deadlines must be followed; they are not mere suggestions. And defendant should not have to engage in

repeated motion practice just to get plaintiff to turn over documents that the Court ordered plaintiff to disclose.

Accordingly, the Court strikes plaintiff’s complaint and its reply to defendant’s counterclaims. Defendant shall file a note of issue on or before October 13, 2022. The Court emphasizes that, in accordance with its previous decision (NYSCEF Doc. No. 47), plaintiff may not rely on or use any documents not produced by September 1, 2022 (including the untimely production disclosed in connection with this motion). However, defendant can choose to use these documents if it wishes.

Defendant is also entitled to reasonable legal fees in connection with filing the instant motion as sanctions for plaintiff’s conduct. Defendant must make a separate motion for such legal fees on or before October 13, 2022.

Accordingly, it is hereby

ORDERED that the motion by defendant to strike plaintiff’s complaint and its reply to defendant’s counterclaims is granted, the complaint and the reply to the counterclaims are severed and dismissed and defendant is directed to file a note of issue on or before October 13, 2022; and it is further

ORDERED that any discovery not produced by plaintiff prior to September 1, 2022 may not be used at trial or any motion.

9/22/2022

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: