

Caputo v IESI NY Corp.
2023 NY Slip Op 30101(U)
January 12, 2023
Supreme Court, New York County
Docket Number: Index No. 150594/2018
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO PART 04

Justice

-----X

FREDERICK CAPUTO,

Plaintiff,

- v -

IESI NY CORPORATION, WASTE CONNECTIONS,
INC., CHARLES MAHONEY, FRANK LINO,

Defendant.

-----X

IESI NY CORPORATION

Plaintiff,

-against-

CENTURY WASTE SERVICES LLC

Defendant.

-----X

INDEX NO. 150594/2018

MOTION DATE 11/11/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595237/2018

The following e-filed documents, listed by NYSCEF document number (Motion 004) 152, 153, 154, 155, 156, 157, 158, 159, 166, 167, 168

were read on this motion to/for DISCOVERY.

Plaintiff seeks to compel the deposition of defendants Lino and IESI NY Corp. (hereinafter "IESI") as named parties to this action. Lino and IESI oppose contending that the failure to notice these depositions in accordance with prior discovery orders constitutes waiver of same.

It is beyond cavil that parties are entitled to the deposition of other parties. “There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof” (CPLR § 3101). The right to such deposition is not absolute, and the failure to timely comply with orders directing a deposition occur may constitute waiver or result in sanctions (*see e.g. Clark v. Allen & Overy, LLP*, 159 AD3d 478 [1st Dept 2018]). However, the failure to timely object to a demand for deposition, or object with sufficient particularity, may constitute waiver of any objection (*see e.g. Khatskevich v. Victor*, 187 AD3d 504 [1st Dept 2020]).

There have been numerous adjournments of motions, conferences, and discovery deadlines in this matter (*see e.g. NYSCEF Doc. Nos. 56, 57, 59, 64, 67, 69, 141, 142, 147* [non-exhaustive list]). Additionally, the parties have attempted to resolve the matter via mediation (NYSCEF Doc. No. 140). This has resulted in delays completing discovery. Given these adjournments and delays, the Court will not deem plaintiff’s notice of deposition waived.

Furthermore, the Court is constrained to note an inconsistency in defendants’ position in opposition. In motion sequence 003, filed nearly contemptuously with the instant motion, defendants IESI, Mahoney, and Lino

sought a further adjournment of defendants Mahoney's and Century Waste's depositions, depositions which have been the subject of various prior orders over a multi-year period and noticed by plaintiff at the same time as defendant IESI (NYSCEF Doc. Nos. 9 – 12); however, in the instant motion, these same defendants contend that plaintiff's failure to abide by these same orders (which defendants also failed to abide by) constitutes waiver of IESI's deposition.

Accordingly, it is

ORDERED that the motion is granted; and it is further

ORDERED that IESI shall appear for deposition, via in-person or electronic means, on February 8, 2023, beginning at 10:00am and continuing until completion without interruption in accordance with the Uniform Rules; and it is further

ORDERED that Frank Lino shall appear for deposition, via in-person or electronic means, on February 15, 2023, beginning at 10:00am and continuing until completion without interruption in accordance with the Uniform Rules; and it is further

ORDERED that post-deposition demands related to the above depositions shall be served no later than 20 days following the deposition giving rise to the demand; responses thereto shall be served no later than 20 days form receipt of demand; and it is further

ORDERED that the failure to timely serve post-deposition demands shall constitute waiver of same; and it is further


ORDERED that the failure to timely respond to timely served post-deposition demands shall result in sanctions, including but not limited to the striking of pleadings or preclusion of evidence, upon further application and in the Court's discretion; and it is further

ORDERED that the deposition dates set forth herein may not be adjourned or otherwise modified absent further Court order; and it is further

[continued on following page]

ORDERED that any requested relief not addressed herein has nevertheless been considered and is hereby denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

<u>1/12/2023</u> DATE			 _____ HON. FRANK P. NERVO	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
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"/>		OTHER
				REFERENCE