

Kaiping Hong-Ri Garment Co. Ltd. v Goldfarb

2023 NY Slip Op 32459(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 656841/2020

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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KAIPING HONG-RI GARMENT CO. LTD.,

Plaintiff,

- v -

LAWRENCE MYRON GOLDFARB, GAIL HELENE
 GOLDFARB, RUSSELL GOLDFARB, DAVID GOLDBERG,
 DANI NADEL, THE GOLDFARB FAMILY TRUST,
 FABRITEX, INC., G18 CORPORATION, LG24 CORP., KIK
 FASHIONS, INC., BLUE SOCIETY, INC., SOCIETY
 CLOTHING, INC.

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 45, 46, 47, 48, 49
 were read on this motion for DISCOVERY SANCTIONS.

Plaintiff, Kaiping Hong-Ri Garment Co., Ltd., (“Plaintiff”) seeks an Order pursuant to CPLR § 3126 (1) striking Defendants’ Lawrence Myron Goldfarb, Russell Goldfarb (“Russell”), Fabritex, INC., G18 Corporation, LG24 CORP., KIK Fashions, Inc., Blue Society, Inc., and Society Clothing, Inc. (“Defendants”) Answer as a sanction for Defendants’ discovery failures, and (2) leave to enter default judgment against Defendant in the amount of \$636,139.79, plus statutory interest from April 7, 2020. Specifically, Plaintiff asserts that Defendants failed to complete their production of documents notwithstanding this Court’s prior Order (NYSCEF 43) requiring production on or before February 17, 2023.

As relevant here, Plaintiff previously moved to strike the answer of Defendants upon the ground that Defendants have failed to complete their production of documents; or alternatively, compelling the Defendants to complete their production of documents within 10 days (Mot. Seq.

002). Defendants failed to respond to that motion. However, given that Mot. Seq. 002 was the first discovery motion made, the Court found that the alternative relief sought by Plaintiff (essentially, giving Defendants a second chance to comply) was appropriate, along with an assessment of fees and costs for forcing Plaintiff to seek relief from the Court (NYSCEF 43). The Court's February 7, 2023 Decision and Order warned Defendants that "failure to comply with this schedule may trigger more severe sanctions, including striking their answers" (*id.*). The Decision and Order directed that Defendants to complete their production of documents within ten (10) days of the date of this Order, or February 17, 2023 (*id.*).

Plaintiff filed this motion on March 28, 2023 (NYSCEF 45) with a return date of April 18, 2023. On April 18, 2023, Defendant's counsel filed a letter requesting a two-week adjournment of this motion and submitted that he was unable to reach his client to schedule depositions, but was making every effort to schedule those depositions, which he believed was the only outstanding discovery left (NYSCEF 48). Attached as an exhibit to Defendants' letter was their "Response to Plaintiff's First Request for Production of Documents" dated March 23, 2022 (NYSCEF 49). On June 22, 2023, the Court advised the parties that: "[i]f this motion is moot, please advise the Court and submit a stipulation withdrawing the motion. If not, Defendant has one week from the date of this Order to file a response to Motion 03. Plaintiff will have 5 days thereafter to file a response" (NYSCEF 50). Defendants did not oppose this motion during the time provided or inform the Court that this motion is moot.

Based on the foregoing, Plaintiff's motion is granted. "Although actions should be resolved on the merits wherever possible, a court may, *inter alia*, strike the 'pleadings or parts thereof' as a sanction against a party who 'refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed [upon notice]'"

(*Herrera v City of New York*, 238 AD2d 475, 475-76 [2d Dept 1997] [internal citation omitted]; CPLR 3126 [3]). “The striking of a pleading may be appropriate where there is a clear showing that the failure to comply with discovery demands or court-ordered discovery is willful and contumacious” (*Mears v Long*, 149 AD3d 823 [2d Dept 2017]). Here, Defendants’ willful and contumacious conduct can be inferred from its repeated failure to comply with Court Orders directing disclosure (*Lucas v Lawrence Stam, Susan Gordon, Martin Clearwater & Bell, LLP*, 147 AD3d 921, 925 [2d Dept 2017]; *Brandenburg v County of Rockland Sewer Dist. #£1*, 127 AD3d 680, 681 [2d Dept 2015]).

Defendants’ submission of its “response” to Plaintiff’s first request for production of documents dated March 23, 2022 on April 18, 2023 is neither timely nor adequate given that the Court was already aware of this submission, which Defendants themselves advised was not complete (NYSCEF 40). Even when given a further opportunity to file opposition to this motion, Defendants failed to do so, thus offering no excuse for their failure to comply. Accordingly, Plaintiff’s motion to strike the Defendants’ answer is granted.

In these circumstances, entry of a default judgment against Defendants in the amount demanded in the complaint (\$636,139.79 plus statutory interest from April 7, 2020) is appropriate (*see Mears*, 149 AD3d at 824 [“[T]he defendants’ willful and contumacious conduct can be inferred from their repeated failures, without an adequate excuse, to comply with discovery demands and the Supreme Court’s discovery orders. Accordingly, the court providently exercised its discretion in granting the plaintiffs’ motion pursuant to CPLR 3126 to strike the defendants’ answer and for leave to enter a default judgment against the defendants”] [internal citations omitted]). The amount sought by Plaintiff is a sum certain based on a Judgment of Non-Dischargeability awarded to Plaintiff in Southern District of New York.

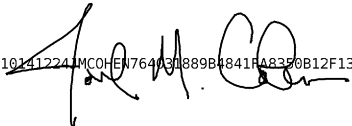
Plaintiff having established that Defendants have willfully failed to provide discovery as directed by this Court, it is hereby

ORDERED that Plaintiff's motion is **GRANTED** and the answer of Defendants is stricken; it is further

ORDERED that default judgment against Defendants is **GRANTED**, and Plaintiff is entitled to a judgment of \$636,139.79, plus statutory interest from April 7, 2020; it is further

ORDERED that the Clerk of the Court shall, upon submission by Plaintiff of a judgment in the appropriate form, enter judgment against Defendants in favor of Plaintiff, with costs and disbursements to Plaintiff as taxed by the Clerk of the Court.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/10/2023

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE