

**Lynx Capital Partners of NJ, LLC v Bayes Capital
LLC**

2023 NY Slip Op 34041(U)

November 8, 2023

Supreme Court, New York County

Docket Number: Index No. 650722/2019

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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LYNX CAPITAL PARTNERS OF NJ, LLC,
Plaintiff,

- v -

BAYES CAPITAL LLC, DOUGLAS ARTHUR SANZONE,
JOHN CHARLES GERACI, JOHN GRIFONETTI, G2
INVESTMENT FUND, LLC, G FUND, LLC, BARDOWN
CAPITAL, LLC, F/K/A BAYES CAPITAL MARKETS,
LLC, HOCKEYTOWN, LLC, BCM HOLDINGS, LLC, A/K/A
BAYES CAPITAL HOLDINGS, LLC

Defendant.

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INDEX NO. 650722/2019
MOTION DATE 07/24/2023
MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 337, 338, 339, 340, 341, 345, 346, 347, 348, 349, 350

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

Upon the foregoing documents, the Defendants’ motion to vacate (i) this Court’s Decision and Order dated April 11, 2022 (the **April 2022 Decision**; NYSCEF Doc. No. 291), (ii) this Court’s Decision and Order dated September 8, 2022 (the **September 2022 Decision**; NYSCEF Doc. No. 320), and (iii) the Judgment entered against the Defendants as to liability on December 27, 2022 (the **Judgment**; NYSCEF Doc. No. 327) is denied.

It is simply false that there was a misunderstanding between the Court and the Defendants regarding the deadline for the production that the Defendants made on January 7, 2022. As previously discussed, this Court made specific findings that the Defendants engaged in willful and contumacious conduct in flouting this Court’s orders and frustrating the Plaintiff’s efforts to

obtain discovery in this case. The decisions of this Court were reviewed by the Appellate Division. It did not disagree.

By Decision and Order dated November 23, 2021 (the **November 2021 Decision**; NYSCEF Doc. No. 173), this Court denied the Plaintiff's motion for sanctions without prejudice and ordered that (i) the parties meet and confer on or before December 5, 2021 as to outstanding discovery items and that the Plaintiff serve a letter by that date indicating any remaining deficiencies, (ii) the Plaintiff file an amended complaint by December 13, 2021, adding additional defendants to the extent appropriate and any other appropriate claims, (iii) the Defendants properly respond to discovery deficiencies, including any necessary sworn affidavits, and indicate which documents in the previous 26,000 document dump responded to which discovery requests by December 31, 2021, and (iv) if any deficiencies remain after that date, the Plaintiff could renew its motion and seek sanctions, including striking the Defendants' pleadings, by January 17, 2021.

The Plaintiff filed the second amended complaint (the **SAC**; NYSCEF Doc. No. 175) on December 13, 2021, adding G2 Investment Fund, LLC, G Fund, LLC, Bardown Capital, LLC, f/k/a/ Bayes Capital Markets, LLC, Hockeytown, LLC (**Hockeytown**), and BCM Holdings, LLC, a/k/a Bayes Capital Holdings, LLC as defendants. On January 5, 2022, the Plaintiff renewed its motion for sanctions, and the Defendants cross-moved to dismiss the SAC.

Pursuant to the April 2022 Decision, the Court granted the Plaintiff's renewed motion for sanctions and struck the Defendants' answer. In the April 2022 Decision, the Court outlined the

Defendants' pattern of willful and contumacious conduct in flouting court orders and their inadequate document productions that were not properly supplemented or fixed (NYSCEF Doc. No. 291, at 1-4). The Court noted that, by email dated December 29, 2021, the Defendants requested until January 7, 2022, to complete their document production and that the Court did not grant that request, even though the Defendants ultimately made their production on January 7, 2022 (*id.*, at 4). The Court also noted that, to date, *i.e.*, even after the January 7, 2022 production, the Defendants failed to produce (i) tax returns, (ii) certain bank statements, (iii) affidavits explaining why certain databases were not searched, and (iv) documentation to evidence certain loans (*id.*, at 5). The Court then ordered that the Defendants' answer be struck and that the issue of damages and attorneys' fees be referred to a Judicial Hearing Officer or a Special Referee (*id.*, at 6).

After the April 2022 Decision was issued, in May 2022, the Defendants filed their answer to the SAC (NYSCEF Doc. No. 293). The Plaintiff then moved for an order clarifying the April 2022 Decision to the extent of (i) clarifying that the Defendants' answer to the SAC was struck and (ii) ordering entry of judgment as to liability in the Plaintiff's favor.

In the September 2022 Decision, the Court granted the Plaintiff's motion and ordered that (i) the April 2022 Decision was clarified to indicate that the Defendants' answer to the SAC was struck and (ii) the Plaintiff was granted leave to file judgment as against the Defendants. The Judgment was entered on December 27, 2022 (NYSCEF Doc. No. 327).

The Defendants appealed the April 2022 Decision, the September 2022 Decision, and the Judgment. By Decision and Order dated June 22, 2023 (the **Appellate Division Decision**), the Appellate Division held that the Defendants' answer was properly struck:

Supreme Court did not abuse its discretion in striking defendants' answers. It properly concluded that defendants' behavior leading up to their document production on January 7, 2022 was dilatory. Among other things, defendants failed to index their August 2021 production of 34,000 documents, evidencing an intention to make it difficult for plaintiff to locate relevant documents, and defendants' production of bank account statements were not chronologically sequenced, suggesting that they were not produced as they are kept in the regular course of business (CPLR 3122[c]). Defendants also provided no explanation for why they had not produced defendant Bayes Capital LLC's general ledgers, SEC filings, K-1s, W-2s, 1099s, payroll registers, documents relating to notes payable, loans, and gifts, and documents relating to Bayes's relationships with the individual defendants, including employment records, until the end of 2021 or in its January 7, 2022 production. These documents were requested in January 2021, and the court specifically ordered their production by the end of July 2021.

Defendants also never explained why they did not produce any 1099s or other tax materials issued by Bayes concerning its 2017 dividend payments to defendant BCM Holdings, LLC. Nor did the individual defendants ever furnish affidavits indicating which documents, of those requested, they were unable to locate, even though plaintiff requested such affidavits at least twice (in its September 3, 2021 deficiency letter and its January 14, 2022 attorney affirmation), and the court orally directed defendants to provide an affidavit of due diligence comporting with *Jackson v. City of New York* (185 A.D.2d 768, 586 N.Y.S.2d 952 [1st Dept. 1992]).

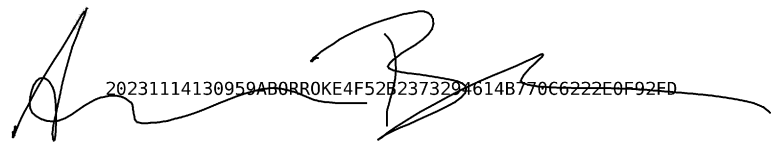
Thus, in combination with defendants' dilatory behavior in furnishing discovery, including in violation of the court's June 2021 order, as well as the court's warning on November 23, 2021 that it would strike Bayes's answer if it and the individual defendants did not comply with plaintiff's demands, the court properly struck defendants' answer (*see e.g. Arts4All, Ltd. v. Hancock*, 54 A.D.3d 286, 288, 863 N.Y.S.2d 193 [1st Dept. 2008], *aff'd* 12 N.Y.3d 846, 881 N.Y.S.2d 390, 909 N.E.2d 83 [2009]).

The court was also entitled to strike the answer as against all defendants, not just Bayes. Although Bayes was the only defendant at the time of the court's April 11, 2022 order, the individual defendants, having been subpoenaed, were subject to the court's June and November 2021 orders. It was not just Bayes but also the individual defendants who violated the court orders. Moreover, the other entity defendants, which had also been subpoenaed, were controlled by the individual

defendants; the previously sought discovery concerned those entity defendants; the discovery produced on January 7, 2022 was on behalf of all defendants; and all defendants were represented before the court by the time it issued its November 23, 2021 warning

(*Lynx Capital Partners of NJ, LLC v Bays Capital LLC*, 217 AD3d 571, 571-572 [1st Dept 2023])¹. This is the beginning and end of this story. There was no misunderstanding. The court did not give further extension. Justice would not be served by vacating the prior decisions or the judgment.

The Court has considered the defendants remaining arguments and finds them unavailing.



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11/8/2023
DATE

ANDREW BORROK, 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

¹ The Court notes that the Appellate Division did vacate the judgment and dismiss the SAC solely as against Hockeytown, LLC for lack of personal jurisdiction.