

**Kalamata Capital Group, LLC v Riddhiman Enters.
L.L.C.**

2024 NY Slip Op 30316(U)

January 26, 2024

Supreme Court, New York County

Docket Number: Index No. 451205/2023

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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KALAMATA CAPITAL GROUP, LLC,
Plaintiff,

- v -

RIDDHIMAN ENTERPRISES L.L.C., GAGANDEEP LNU,
RIDDHIMAN ENTERPRISES LLC, RIDDHIMAN EXPRESS
INC., GAGAN DEEP PUNEET BATRA, PUNEET BATRA

Defendant.

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INDEX NO. 451205/2023
MOTION DATE 06/30/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 101, 102, 103, 105

were read on this motion to/for STRIKE PLEADINGS

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, the motion is granted, for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 87, 103) and the exhibits attached thereto, and as summarized in the following memorandum decision.

This breach of contract action arises out a merchant credit advance transaction, and was originally commenced in the Supreme Court of the State of New York, Sullivan County. While still pending before that court, plaintiff moved to compel responses to certain discovery demands. By decision and order dated January 6, 2023, the court, per the Hon. Stephen G. Schick, directed defendants to produce all corporate bank statements for the corporate defendants from June 21, 2022 through the date of production, within 45 days of the order (decision and order, NYSCEF Doc. No. 38). The time for production expired on February 20, 2023 without any production by defendants. Defendants then were granted transfer of the action to New York County, where it was assigned to the undersigned (decision and order, NYSCEF Doc. No. 83).

As part of the order directing transfer of the case, Justice Schick ordered all discovery deadlines extended for an additional 45 days (*id.*), which time period expired June 9, 2023. Shortly thereafter, plaintiff made the instant motion.

Where a party “refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just” (CPLR 3126). “A complete failure to disclose is not a prerequisite to the imposition of sanctions pursuant to CPLR 3126, the relevant factor being whether the failure to disclose relevant documents at issue was willful and contumacious” (*Waltzer v Tradescape & Co., L.L.C.*, 31 AD3d 302, 303 [1st Dept 2006]). Willful and contumacious behavior may be inferred from repeated disregard of the Court’s discovery orders without reasonable excuse (*Rosengarten v Born*, 161 AD3d 515, 515 [1st Dept 2018]). “A determination of sanctions pursuant to CPLR 3126 lies in the trial court’s discretion” (*Board of Mgrs. v Leardon Boiler Works, Inc.*, 178 AD3d 462, 462 [1st Dept 2019]).

In a letter submitted after the motion was briefed, defendants assert that they produced bank records for April, May, July, August, and September 2022 in substantial compliance with the earlier discovery order (letter to court dated August 3, 2023, NYSCEF Doc. No. 104). In response, plaintiff’s state that defendant’s production is missing statements for June 2022 and November 2022 through April 2023, which statements were required to be produced pursuant to Justice Schick’s order. In addition, what statements were produced were so redacted as to obscure the information necessary to determine defendants’ revenue, which is at issue in this matter (letter to court dated August 3, 2023, NYSCEF Doc. No. 105). Accordingly, the court does not credit defendants’ partial and belated compliance with its discovery obligations. Moreover, while the affirmation of good faith submitted by plaintiff’ counsel is sparse on the

necessary details regarding efforts to meet and confer, the record taken as a whole sufficiently establishes plaintiff's attempts to obtain relevant discovery pursuant to Article 31 of the CPLR and to the order of Justice Schick, and defendants' failure to comply with their discovery obligations. Defendants offer no meaningful excuse for their failure to fully comply, and the court accordingly finds such failure to be willful and contumacious (*Rosengarten*, 161 AD3d at 515).

Accordingly, the plaintiff having established that defendant has willfully failed to provide discovery as directed in the order of the Supreme Court of the State of New York, Sullivan County dated January 6, 2023, in that defendant has failed to produce all bank statements for the period between June 21, 2022 and the date of production, April 25, 2023, and to produce them in such a manner as addresses the issue for which they were sought; it is hereby

ORDERED that plaintiff's motion is granted and the answer of defendants is stricken unless, within 30 days from service of a copy of this order with notice of entry, defendant shall produce full and complete copies of all corporate bank statements from June 21, 2022 through April 25, 2023, and redact them for the limited purpose of shielding proprietary information not relevant to this action only; and it is further

ORDERED that, counsel shall appear for a status conference in Room 1166, 111 Centre Street, on March 6, 2024 at 2:15 PM.

This constitutes the decision and order of the court.



1/26/2024

DATE

LOUIS L. NOCK, 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