

Abrams v Hyatt Corp.

2024 NY Slip Op 30592(U)

February 15, 2024

Supreme Court, New York County

Docket Number: Index No. 150135/2018

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12

Justice

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INDEX NO. 150135/2018

MELANIE K. ABRAMS,

MOTION DATE 10/17/2023

Plaintiff,

MOTION SEQ. NO. 002

- v -

HYATT CORPORATION,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

HYATT CORPORATION

Third-Party
Index No. 595970/2020

Plaintiff,

-against-

AMERICAN LEISURE, LLC, LIV UNLTD LLC

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108, 109

were read on this motion to/for VACATE

Plaintiff commenced this slip and fall action against defendant Hyatt Corporation (Hyatt) which arises out of an accident on December 8, 2018, in the pool area of the Park Hyatt Hotel, located at 153 West 57th Street, New York, New York, in which she allegedly sustained injuries. At the time of the accident, Hyatt contracted with American Leisure, LLC to help manage the subject pool. Hyatt subsequently impleaded American Leisure, LLC and LIV UNTLD LLC¹ as third-party defendants (collectively, American Leisure), asserting causes of action for common law indemnity, contribution, contractual indemnity and breach of contract for failure to procure insurance.

¹ American Leisure, LLC's name was changed to LIV UNTLD LLC at some point in 2016.

On May 12, 2023, this Court declined to vacate its order dated February 21, 2023, which struck the answer of American Leisure following its failure to provide certain discovery responses (motion sequence 001). In its decision and order, the Court delineated the procedural history leading up to its determination:

By order dated July 20, 2022, Justice Barbra Jaffe directed that third-party defendants American Leisure, LLC and LIV UNLTD LLC (third-party defendants) shall serve a response to plaintiff's post-EBT demands (dated July 13, 2021...) and defendant/third-party plaintiff Hyatt Corporation's notices to produce (dated July 21, 2021 and May 26, 2021) by August 15, 2022. Justice Jaffe further directed that, "As these items were marked final twice, the failure to comply will result in the striking of the answers of third-party defendants American Leisure, LLC and LIV UNLTD LLC. This is a self-executing order." See NYSCEF doc. no. 58 (emphasis added).

This matter was scheduled for a status conference on February 21, 2023, at which counsel for plaintiff and defendant/third-party plaintiff Hyatt Corporation appeared. Third-party defendants did not appear. Counsel for plaintiff and defendant/third-party plaintiff represented that third-party defendants failed to provide responses to the discovery demands as ordered by Justice Jaffe. Therefore, by order dated February 21, 2023, the answers of third-party defendants were stricken pursuant to Justice Jaffe's self-executing order.

...As third-party defendants have demonstrated a repeated pattern of ignoring court orders and discovery demands, there is an inference that the party's conduct is willful and contumacious, warranting the imposition of a penalty. See *Goldstein v CIBC World Markets, Corp.*, 30 AD3d 217 (1st Dept. 2006). Accordingly, the Court declines to vacate its order dated February 21, 2023, which confirms that Judge Jaffe's self-executing order was triggered by third-party [defendants'] failure to comply with the directives therein.

By notice of motion, American Leisure now seeks an order: (1) vacating the order of the Court dated July 20, 2022, (2) following vacatur, renewing its motion to vacate the February 21, 2023, conference order (motion sequence 001), and (3) upon renewal, vacating the part of the February 21, 2023, order that deemed its answer stricken. Hyatt opposes.

American Leisure's motion is denied in all respects. At the outset, the Court notes that American Leisure effectively seeks the same relief as previously sought in motion sequence 001. Although American Leisure now moves to vacate the earlier July 20, 2022, self-executing order, the arguments raised in this motion are identical to those raised in the previous motion, which were already reviewed and denied by this Court. As such, the instant motion is an impermissible attempt to circumvent this Court's decision and order dated February 21, 2023.

Turning to the merits of the motion, in order to vacate a default judgment resulting from a conditional order of preclusion, a defendant must demonstrate a reasonable excuse for failing to comply with the terms of the conditional order and a meritorious defense to the complaint. *See Pugliese v Mondello*, 67 AD3d 880, 881 (2d Dept 2009); *see also Commissioners of State Ins. Fund v Valenzano*, 175 AD2d 687, 688 (1st Dept 1991).

In support of its motion, counsel for third-party defendants reiterates that the handling partner was unaware that a conference was scheduled on February 21, 2023, and, as such, he was unable to explain the reasons for failing to provide a discovery response as directed by the Court.² Although American Leisure contends that it did not appear at the February 21, 2023 conference due to law office failure, it does not address the underlying reasons why a formal discovery response was not provided by August 15, 2022. Notably, counsel for American Leisure signed such order, and, therefore, was on notice of the Court's self-executing directive. As American Leisure does not demonstrate a reasonable excuse for its default in providing discovery responses, its motion to vacate the July 20, 2022, order is denied.

The Court notes that Justice Jaffe's July 20, 2022, self-executing order does not exist in a vacuum. Following numerous instances of American Leisure's failure to comply with previous orders, the Court, in its discretion, entered a self-executing order striking American Leisure's answer should certain discovery remain outstanding. Despite the July 20, 2022 order, American Leisure has still failed to respond to Hyatt's notices to produce dated July 21, 2021 and May 26, 2021. Therefore, the Court declines to disturb the July 20, 2022, decision and order and its more recent decision and order dated May 12, 2023.

² Specifically, American Leisure maintains that it could not provide the documents demanded by Hyatt because Hyatt retained possession of the records kept in the course of their maintenance contract. As Hyatt did not renew its contract with American Leisure, it asserts that it cannot access the records demanded. However, American Leisure does not tender any cognizable reason why it did not provide a formal discovery response to such effect.

Accordingly, it is

ORDERED that the motion of American Leisure, LLC to vacate the order of the Court dated July 20, 2022, is denied.

The foregoing constitutes the decision and order of the Court.

~~HON. LESLIE A. STROTH~~
J.S.C.

02/15/2024

DATE

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