

Global Care Pharm. Inc. v Cheung

2024 NY Slip Op 34116(U)

November 19, 2024

Supreme Court, Kings County

Docket Number: Index No. 516525/2020

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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GLOBAL CARE PHARMACY INC., JIAN HUI LIU,
individually and derivatively on behalf
of GLOBAL CARE PHARMACY, INC.,

Plaintiff,

Decision and order

- against -

Index No. 516525/2020

JOSEPHINE WANLING CHEUNG a/k/a
JOSEPHINE CHEUNG and SHAN WANG,

Defendants,

November 19, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #9 & #10

The plaintiff has moved seeking to strike the defendant's answer for the failure to engage in discovery. The defendants have cross-moved essentially seeking certain discovery. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior decisions, on October 25, 2018 the defendant Josephine Cheung the sole owner of Global Care Pharmacy Inc., offered the plaintiff Jian Liu an opportunity to purchase a forty percent share of the pharmacy. Indeed, on December 28, 2018 the parties entered into a stock transfer agreement whereby Liu became a forty percent owner of the pharmacy and was also hired as the supervising pharmacist while Cheung maintained her role as the president and manager of the pharmacy. The amended complaint alleges that upon informing the defendants that she was pregnant she was denied a bonus that was paid other employees and after she gave birth her hours were increased despite her

requests for accommodations. Further, the amended complaint asserts her hourly salary was reduced without notice and that the defendants pressured her to relinquish her forty percent share of the pharmacy.

The amended complaint also alleges the defendants engaged in mismanagement and the diversion of corporate assets. The defendant answered the amended complaint and asserted numerous counterclaims.

The parties engaged in discovery and discovery disputes arose. On July 2, 2024 the court entered an order requiring the defendant to provide certain discovery. The plaintiff has filed this motion asserting the defendants have failed to comply with such discovery order. The defendants argue they have complied with all discovery and indeed seek discovery from the plaintiff.

Conclusions of Law

It is well settled that the trial court maintains broad discretion concerning the appropriate sanction for a discovery violation (Espinal v. City of New York, 264 AD2d 806, 695 NYS2d 610 [2d Dept., 1999]). The severe sanction of striking a pleading is appropriate where it can be demonstrated that the failure to comply with discovery was the result of wilful and contumacious conduct (Harris v. City of New York, 211 AD2d 663, 622 NYS2d 289 [2d Dept., 1995]). Such conduct may be inferred

from a party's actions, specifically a long period of time passing without complying with the discovery coupled with the absence of any reasonable excuse to explain such failure to comply (Birch Hill Farm Inc., v. Reed, 272 AD2d 282, 707 NYS2d 188 [2d Dept., 2000]). Generally, the failure of either party to provide sought after discovery and to follow the express order of the court demonstrates a "pattern of wilful default and neglect" concerning the outstanding discovery (Clarke v. United Parcel Service Inc., 300 AD2d 614, 752 NYS2d 395 [2d Dept., 2002]).

The defendants did not engage in any wilful or contumacious conduct to the extent the answer should be struck. In fact, it is apparent the defendants have provided all the discovery in their possession. Thus, the motion is resolved as follows. The defendants shall submit an affidavit confirming they have supplied all the discovery contained in all the discovery demands, to the extent not already provided, the defendant shall provide thorough affidavits detailing where the discovery sought was generally located, searches that were conducted at those locations and affidavits that no further discovery exists. Those affidavits must be produced within thirty days of receipt of this order.


Likewise, the plaintiff must respond to the defendant's discovery requests and must do so within thirty days of receipt of this order.

All motions seeking dismissal or some other sanction are denied at this time.

So ordered.

ENTER:

DATED: November 19, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC