

Dagounakis v Bay Terrace Plaza LLC
2024 NY Slip Op 35286(U)
September 25, 2024
Supreme Court, Nassau County
Docket Number: Index No. 612624/2018
Judge: Sharon M.J. Gianelli
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU Commercial Division – Part 7
Present: Hon. Sharon M.J. Gianelli

ANTONIOS DAGOUNAKIS, VASILIOS LAZARIDIS
and HENRY STREET PLAZA LLC,

Plaintiffs,

-against-

BAY TERRACE PLAZA LLC, GEORGE MENEXAS
and STEVE MENEXAS and COMMACK PLAZA LLC,

Defendants.

X

Index No. 612624/2018

Mot. Seq. No. 019 and 020

Decision and Order

Papers Submitted:

Mot. Seq. No. 019

Plaintiffs' Notice of Motion _____X

Plaintiffs' Affirmation in Support w/Exhibits _____X

Mot. Seq. No. 020

Defendant George Menexas' Order to Show Cause _____X

Defendant George Menexas' Affidavit in Support

w/Exhibits _____X

Plaintiffs Affirmation in Opposition w/Exhibits _____X

Mot. Seq. No. 019

This is Plaintiffs' motion for an Order of the Court striking Defendant George Menexas' Answer with Affirmative Defenses and Counterclaims pursuant to CPLR 3126, and prohibiting Defendant George Menexas from introducing evidence at trial related to the claims in this action; and awarding Plaintiffs costs and attorneys' fees associated with the motion.

Mot. Seq. No. 020

This is Defendant George Menexas' motion, by way of Order to Show Cause, for an Order of the Court (entered on February 11, 2025, with temporary restraining order

denied); vacating the default entered against Defendant George Menexas on January 23, 2025; granting Defendant George Menexas leave to file opposition to Plaintiffs' Mot. Seq. 019; vacating the judgment entered against Defendant George Menexas on November 5, 2024; granting Defendant George Menexas leave to file opposition to Plaintiffs' Invoices for Plaintiff's Notice of Settlement w/Proposed Judgment/Counter Judgment; ordering Plaintiffs' counsel to provide Defendant George Menexas with a copy of his deposition transcript; ordering Plaintiffs' counsel to provide Defendant George Menexas with a list of all parties subpoenaed and the documents collected from each, as well as the date received; and ordering Plaintiffs' counsel to provide Defendant George Menexas with a copy of the QuickBooks subpoena production.

Upon consideration of the parties' submissions, the Court's ruling is set forth below. The history and facts concerning this breach of contract action have previously been recited in prior Decisions and Orders. By the Court's most recent Decision and Order, entered September 26, 2024 (Mot. Seq. No. 018 - Attachment No. 1), the Court denied Plaintiffs' motion to strike, directed Defendant George Menexas to "serve full and complete responses to any and all outstanding discovery demands within sixty (60) days from the date of service of the Decision and Order with Notice of Entry"; "to appear for a deposition in connection with this action within ninety (90) days ..."; "...that upon failure of Defendant George Menexas to comply with this Decision and Order, Plaintiffs may reapply to the Court for an Order striking Defendant George Menexas' Answer with Affirmative Defenses and Counterclaims". The Court also granted Plaintiffs' application for costs and counsel fees.

Plaintiffs have filed the motion herein (Mot. Seq. No. 019) asserting that Defendant George Menexas has failed to comply with the Court's Decision and Order, entered September 26, 2024 (Mot. Seq. No. 018 - Attachment No. 1). In connection with their Mot. Seq. No. 019, Plaintiffs submitted a thorough and well-reasoned "Affirmation in Support" of the motion (Attachment No. 2). Defendant George Menexas submitted no opposition to Mot. Seq. No. 019.

CPLR 3126(3) provides in pertinent part:

Penalties for refusal to comply with order or to disclose. If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or willfully fails to disclose information which the court finds out to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

(3) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

The Court has reviewed and considered the submissions and has credited Plaintiffs'. Notwithstanding the numerous warnings and Orders, Defendant George Menexas has repeatedly refused to comply with Plaintiffs' lawful discovery demands, as well as the Court's Decisions and Orders - most recently, the Court's Decision and Order entered September 26, 2024 (Mot. Seq. No. 018).

In their papers, Plaintiffs have set forth a thorough recitation of the history of this matter, together with prior Decisions and Orders of the Court, and a persuasive argument for the motion relief sought. Defendant George Menexas has failed to

sufficiently counter. Upon review and consideration of the papers submitted, the Court credits Plaintiffs' submissions as aligning with the Court's record of this action, as well as the law.

The Court has also considered Defendant George Menexas' motion to vacate. As effectively argued in Plaintiffs' motion, while the grant of a motion to vacate is at the discretion of the court, the party seeking vacatur, "must demonstrate both a reasonable excuse for the default and a potentially meritorious cause of action or defense" (*Bernstein v. Geiss*, 111 AD3d 774, 775 [2d Dept 2013]); *Wells Fargo Bank v. Malave*, 107 AD3d 880 [2d Dept 2013])." In his Affidavit in Support of the motion to vacate (Mot. Seq. No. 020 – Attachment No. 3), Defendant George Menexas offers babysitting delays as his excuse for failing to appear in Court as directed – this following a history of non-compliance and dilatory and evasive conduct on his part throughout the discovery phase of this litigation. The excuse is insufficient to establish it as a reasonable excuse for his default. Instead, it is illustrative of Defendant George Menexas' continued intentional pattern of ignoring and failing to comply with discovery requirements, including the Court's Decisions and Orders. Defendant George Menexas has repeatedly engaged in actions that can reasonably be defined as willful, dilatory, evasive, and obstructionist. He has been afforded repeated opportunities to comply and has repeatedly failed to do so. Defendant George Menexas has failed to demonstrate that vacatur of the default is warranted.

Upon consideration of the papers submitted, together with the history of this action, including Defendant George Menexas' repeated non-compliance, vacatur of the default

judgment against Defendant George Menexas is not reasonable nor warranted, and striking his Answer is.

Accordingly,

It is

ORDERED, that Plaintiffs' motion (Mot. Seq. No. 019) for an Order of the Court striking Defendant George Menexas' Answer with Affirmative Defenses and Counterclaims pursuant to CPLR 3126, is Granted; and

It is

ORDERED, that Plaintiffs' motion (Mot. Seq. No. 019) for an Order of the Court prohibiting Defendant George Menexas from introducing evidence at trial related to the claims in this action, is Granted; and

It is

ORDERED, that awarding Plaintiffs' motion (Mot. Seq. No. 019) for an Order of the Court awarding Plaintiffs costs and attorneys' fees associated with the motion, is Granted; and

It is

ORDERED, that Defendant George Menexas' motion by way of Order to Show Cause (Mot. Seq. No. 020) for an Order of the Court vacating the default entered against him on January 23, 2025, is Denied; and

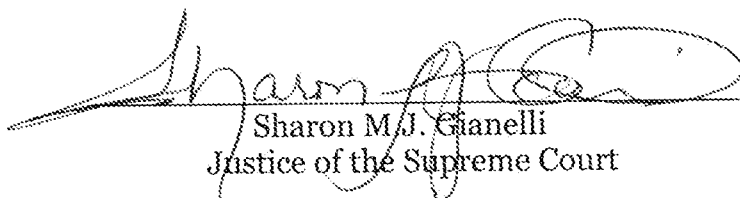
It is

ORDERED, that Defendant George Menexas' motion by way of Order to Show Cause (Mot. Seq. No. 020) for an Order of the Court granting Defendant George Menexas leave to file opposition to Plaintiffs' Mot. Seq. 019; vacating the judgment entered against Defendant George Menexas on November 5, 2024; and granting Defendant George Menexas leave to file opposition to Plaintiffs' Invoices for Plaintiff's Notice of Settlement w/Proposed Judgment/Counter Judgment; ordering Plaintiffs' counsel to provide Defendant George Menexas with a copy of his deposition transcript; ordering Plaintiffs' counsel to provide Defendant George Menexas with a list of all parties subpoenaed and the documents collected from each, as well as the date received; and ordering Plaintiffs' counsel to provide Defendant George Menexas with a copy of the QuickBooks subpoena production, is Denied in its entirety.

Any application not specifically ruled upon herein is denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
March 4, 2025



Sharon M.J. Gianelli
Justice of the Supreme Court

ENTERED

Mar 06 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Attachment No. 1

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NASSAU Commercial Division – Part 7
 Present: Hon. Sharon M.J. Gianelli

ANTONIOS DAGOUNAKIS, VASILIOS LAZARIDIS
 and HENRY STREET PLAZA LLC,

Plaintiffs,

-against-

BAY TERRACE PLAZA LLC, GEORGE MENEXAS
 and STEVE MENEXAS and COMMACK PLAZA LLC,

Defendants.

X

Index No. 612624/2018

Mot. Seq. No. 018

Decision and Order

Papers submitted on this motion:

Notice of Motion, Memorandum of Law, Affirmation and
 Exhibits in Support

X

X

Plaintiffs move for an Order: 1) pursuant to CPLR § 3126, striking Defendant George Menexas' Answer with Affirmative Defenses and Counterclaims and prohibiting Defendant George Menexas from introducing evidence at trial related to the claims in this action; and, 2) pursuant to 22 NYCRR § 130-1.1, awarding Plaintiffs costs, expenses, and attorneys' fees incurred in connection with this application.

Factual Background

This is an action to recover damages for breach of contract, conversion, breach of fiduciary duty, fraud, unjust enrichment, and an accounting. Plaintiff commenced this action with the filing of a Summons and Complaint on September 18, 2018. An Amended Complaint was filed on May 2, 2019, alleging that, in connection with the operation of Bay Terrace Plaza LLC and Commack Plaza LLC (collectively, "the

Restaurants"), Defendants George Menexas and Steve Menexas¹ (collectively, "the Menexas Defendants") deprived Plaintiffs of access to the Restaurants' books, records, and financial information; and diverted income/profits from the Restaurants for their own personal gain. On May 31, 2019, the Menexas Defendants jointly filed an Answer to the Amended Complaint containing general denials, affirmative defenses, and counterclaims for breach of contract and breach of fiduciary duty.

Plaintiffs now seek an Order of the Court striking Defendant George Menexas' Answer on the grounds that Defendant George Menexas has repeatedly failed to respond to demands; has obfuscated discovery by producing "document dumps;" has failed to comply with court orders compelling disclosure; and, has refused to appear for the continuation of his deposition.

On June 16, 2021, a deposition of Defendant George Menexas was conducted. During his deposition, Defendant George Menexas testified about certain financial statements, communications, and spreadsheets that had not been disclosed; accordingly, his deposition was held open pending his production of such documents.

On July 14, 2021, Plaintiffs sent a letter memorializing the documents requested at George Menexas' deposition and demanding production within 20 days (i.e., on or

¹ On or about January 17, 2023, Defendant Steve Menexas filed for bankruptcy, triggering an automatic stay of this action with respect to Defendant Steve Menexas. Such stay remains in place as of the date of this Decision and Order.

before August 3, 2021) ("the post-EBT Demand"). Notwithstanding several follow up requests, George Menexas failed to produce responses.

On October 13, 2021, Plaintiffs filed a motion to, among other things, compel George Menexas to provide responses to their post-EBT Demand and to appear for the completion of his deposition (Motion Seq. 012). By Decision and Order entered on February 16, 2022 ("the First Discovery Order"), the Court (DeStefano, J.) directed George Menexas to produce the items requested in paragraphs "i," "iii," "iv," "x," "xi," "xii," "xiii," "xiv," "xv," "xvi," "xvii," "xviii," "xix," and "xx" of the post-EBT Demand. However, the First Discovery Order denied Plaintiffs' request to compel George Menexas to appear for the completion of his deposition, noting that he had agreed to "appear for a continued deposition up to the 7-hour limit". Thereafter, George Menexas produced approximately 47,000 pages of documents without any itemization or explanation.

At a hearing held on June 7, 2022, this Court (Gianelli, J.) found that, in effect, there had been no response to the post-EBT Demand. By stipulation and order entered on June 22, 2022 ("the Second Discovery Order"), this Court (Gianelli, J.) directed George Menexas to produce itemized responses to the post-EBT Demand. Notwithstanding several follow up requests, George Menexas failed to produce itemized responses.

On September 7, 2022, Plaintiffs filed a second motion to compel (Motion Seq. 015). By Decision and Order dated on April 19, 2023 ("the Third Discovery Order"), this Court

(Gianelli, J.) directed George Menexas to comply with the Second Discovery Order within 14 days of the date of the Decision and Order (i.e., on or before May 5, 2023). On May 4, 2023, George Menexas responded to the post-EBT Demand; however, with respect to the items requested in paragraph "xix" of the post-EBT Demand (i.e., all invoices and receipts reflecting charges and expenses that George Menexas purportedly paid for any of the Restaurants), George Menexas only referenced random receipts and photographs that had been previously disclosed and were unresponsive to the request.

On May 24, 2023, Plaintiffs served a third notice for discovery and inspection ("the Third NDI") requesting documentation reflecting payments by George Menexas of the invoices and receipts provided in his response to paragraph "xix" of the post-EBT Demand; and, documentation reflecting payments of the charges evidenced in the credit cards issued to George Menexas, which were identified in his response to paragraphs "xv" and "xx" of the post-EBT Demand. George Menexas failed to produce responses to the Third NDI.

Subsequently thereafter, counsel at the time for Defendant Steve Menexas moved to be relieved as attorneys of record for Defendant George Menexas. By Decision and Order dated June 15, 2023, this Court (Gianelli, J.) granted the motion with respect to Defendant George Menexas and stayed this action for ninety (90) days.

Following the lifting of the stay, Plaintiffs sent an email on October 2, 2023, requesting that George Menexas produce responses to the Third NDI within 10 days (i.e., on or

before October 12, 2024); and, requesting that George Menexas appear on November 16, 2023 to continue his deposition as previously agreed and as referenced in the Court's Order dated February 15, 2022. Plaintiffs assert that George Menexas failed to produce responses to the Third NDI; failed to appear for his deposition; and failed to request an adjournment of his deposition.

Law/Analysis

CPLR §3126(3) provides, that, "[i]f any party...refuses to obey an order for disclosure or willfully fails to disclose information which the Court finds ought to have been disclosed...the Court may make...an order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party" (See CPLR § 3126[3]).

"Resolution of discovery disputes and the nature and degree of the penalty to be imposed pursuant to CPLR 3126 are matters within the sound discretion of the motion court" (*Carmona v. HUB Properties Tr.*, 186 AD3d 1485 [2d Dept 2020]). "Although actions should be resolved on the merits wherever possible . . . a court may 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' " (*Bouri v. Jackson*, 177 AD3d 947 [2d Dept 2019] [internal citations omitted], quoting CPLR § 3126). "The willful and contumacious character of a party's conduct can be inferred from either the repeated failure to respond to demands or comply with discovery orders, without demonstrating a reasonable excuse for these

failures, or the failure to comply with court-ordered discovery over an extended period of time” (*Wolf v Flowers*, 122 AD3d 728 [2d Dept 2014]). “[T]he moving party bears the initial burden of coming forward with a sufficient showing of willfulness. . . . The resisting party must then offer a reasonable excuse for this default” (*Furniture Fantasy, Inc. v. Cerrone*, 154 AD2d 506 [2d Dept 1989] [internal quotations omitted]).

Here, Defendant George Menexas has repeatedly failed to respond to demands and comply with court-ordered discovery over an extended period of time. However, in an effort to resolve this action on the merits and in consideration of external circumstances previously raised by Defendant George Menexas, this Court chooses not to exercise the drastic remedy of striking the answer at this time; instead providing Defendant George Menexas one additional opportunity to comply with outstanding discovery demands in this matter. Notwithstanding the aforementioned, based upon Defendant George Menexas’ conduct thus far, this Court finds the award of attorneys’ fees as sanctions to be appropriate (*see Feldman v Sarubbi*, 300 A.D.2d 347 [2d Dept. 2002]).

Accordingly,

It is

ORDERED, that Plaintiffs’ motion for an Order striking Defendant George Menexas’ Answer with Affirmative Defenses and Counterclaims, is Denied at this time; and

It is

ORDERED, that Defendant George Menexas is hereby directed to serve full and complete responses to any and all outstanding discovery demands within sixty (60) days from the date of service of a copy of this Decision and Order with Notice of Entry; and

It is

ORDERED, that Defendant George Menexas is hereby directed to appear for a deposition in connection with this action within ninety (90) days from the date of service of a copy of this Decision and Order with Notice of Entry; and

It is

ORDERED, that upon the failure of Defendant George Menexas to comply with this Decision and Order, Plaintiffs may reapply to the Court for an Order striking Defendant George Menexas' Answer with Affirmative Defenses and Counterclaims; and

It is

ORDERED, that Plaintiffs' application for costs, expenses and attorneys' fees incurred in connection with the making of this motion, is Granted; and

It is

ORDERED, that Plaintiffs' attorneys are directed to submit an Affirmation of Legal Services in connection with above-granted attorneys' fees and costs, if any, within sixty (60) days of the date of entry of this Decision and Order; and

It is

ORDERED, that Plaintiffs shall settle Judgment on Notice in accordance with the Affirmation of Legal Services in connection with above-granted attorneys' fees and costs, if any, within sixty (60) days of the date of entry of this Decision and Order; and

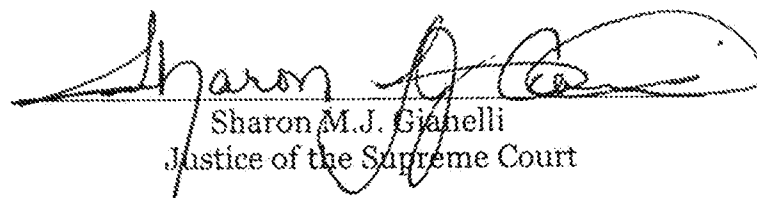
It is

ORDERED, that the parties, with the exception of Defendant Steve Menexas, shall appear before this Court for a conference on January 16, 2025 at 10:30 a.m.

Any application not specifically ruled upon herein is denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
September 25, 2024



Sharon M.J. Gianelli
Justice of the Supreme Court

ENTERED

Sep 26 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Attachment No. 2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU-----X
ANTONIOS DAGOUNAKIS, VASILIOS LAZARIDIS
and HENRY STREET PLAZA LLC,

Plaintiffs,

AFFIRMATION IN SUPPORT

-against-

Index No.: 612624/2018

BAY TERRACE PLAZA LLC, GEORGE MENEXAS
and STEVE MENEXAS and COMMACK PLAZA LLC,

(Motion Seq. 019)

Defendants.
-----X

PETER MOULINOS, an attorney duly admitted to practice law in the State of New York,
affirms under the penalties of perjury as follows:

1. Your affirmant is counsel for Plaintiffs Antonios Dagounakis, Vasilios Lazaridis and Henry Street Plaza LLC (collectively "Plaintiffs") in the above entitled action, is fully familiar with all the facts and circumstances relevant to this application and makes this Affirmation in support of Plaintiffs' motion for an Order: (i) pursuant to C.P.L.R. §3126, striking Defendant George Menexas' Answer with Affirmative Defenses and Counterclaims, and prohibiting Defendant George Menexas from introducing evidence at trial related to the claims in this action; (ii) pursuant to 22 NYCRR 130-1.1 ("Part 130"), awarding Plaintiffs the costs, expenses and attorneys' fees and costs incurred as a result of having to seek this application; and (iii) for such other and further relief as this Court may deem just and proper.

PRELIMINARY STATEMENT

2. This is the fourth motion filed against Defendant George Menexas ("Menexas") as a result of his wanton and intentional refusal to comply with his discovery obligations and Court Orders issued against him in this action. [See prior Motion Sequences 12, 15 and 18]. Time and time again throughout this action Menexas, through multiple attorneys and now on his own *pro se*, has intentionally obstructed the conduct of discovery, created unnecessary cost and expense to the Plaintiffs by producing enormous amounts of non-relevant documentation, created false pretenses for his failure to comply with his obligations and has refused to appear for the taking of his deposition.

3. As previously stated in our prior motions, Menexas has treated the C.P.L.R. and this Court's Orders as a door mat. Only until faced with motions for contempt and sanctions, does Menexas actually comply with his discovery obligations and this Court's Orders. Even then, his actions feign compliance and fall far short of the requirements bestowed upon him by both the C.P.L.R. and this Court.

4. In his most recent round of deceitful and dilatory conduct by Menexas, has defied yet another Court Order, this time the one entered on September 26, 2024 which decided Plaintiff's motion sequence 18 ("the Order"). The Order directed him to serve full and complete responses to any and all outstanding discovery demands included in the Plaintiffs' Third Notice for Production of Documents and the name of an "aggressive tax accountant" hired by Menexas to re-vamp the books and records at issue in this case. Rather than comply with the Order, Menexas did again what he has been doing consistently throughout this action — provide responses which are non-compliant and are non-responsive to Plaintiffs' discovery demands. This continued intentional and deceitful conduct should be the last straw.

5. In fact, pursuant to the Order, the court stated that it was providing him “one additional opportunity to comply with outstanding discovery demands in this matter”. Mr. Menexas has rubbished that opportunity in an utter disrespect to both the Order and the Court.

6. The time has come for the Court to sanction Menexas appropriately, to strike his answer and counterclaims in this action and, since Menexas does not wish to comply with his discovery obligations, to prevent him from introducing any evidence at the trial of this action.

BACKGROUND OF THIS ACTION

7. This is an action brought by Plaintiffs against the Defendants seeking to recover damages for breach of contract, conversion, breach of fiduciary duty, fraud, unjust enrichment and an accounting. Plaintiffs allege in their Amended Verified Complaint filed herein that Defendants George Menexas and Steve Menexas (collectively “the Menexas Defendants”), while operating restaurants owned in the names of Bay Terrace Plaza LLC (“BTP LLC”) and Commack Plaza LLC (“CP LLC”)(collectively “the Restaurants”) failed to account to the Plaintiffs for all of the profits and losses of the Restaurants, siphoned, diverted, transferred and conveyed all of the income and profits of the Restaurants to other entities not related to the Restaurants, kept such income and profits for their own personal use and benefit and excluded the Plaintiffs from the management of the Restaurants. Plaintiffs also seek an accounting of all the books and records of the Restaurants. [See Amended Complaint NYSCEF Doc. No. 141].¹

8. The Menexas Defendants filed an Answer with Counterclaims against the individual

¹ It should be noted that Defendant Steve Menexas has filed a petition for bankruptcy in the U.S. Bankruptcy Court and this action is stayed against him. Plaintiffs do not seek any relief against Steve Menexas by reason of that stay.

Plaintiffs, Antonios Dagounakis ("Dagounakis") and Vasilios Lazaridis ("Lazaridis") for breach of fiduciary duty and breach of agreement. [See Answer to Amended Complaint NYSCEF Doc. No. 145].

9. Given the nature of this action, the main body of evidence necessary to resolve the claims of the parties are the financial documentation and operation of the Restaurants. Those records would include the financial books and records of the Restaurants, the Quickbooks accounting system maintained by the Restaurants, the profit and loss statements, the general ledgers and the annual financial statements, which Defendants have never produced. Plaintiffs have been left to piece together the financial information relating to the Company from third parties and bank statements.

10. During the deposition, significant discrepancies, false statements and evidence of misappropriation of monies came to light. Those discrepancies were laid out for the Court in our prior Motion Sequence 12 which is incorporated by reference herein. [See NYSCEF Doc. No. 248-278].

11. In light of the testimony at Menexas' deposition, Plaintiffs, on July 14, 2021, memorialized their additional document demands in a formal letter to Menexas' attorney ("the Post-EBT Demands"). A copy of my July 14, 2021 letter setting forth the Post-EBT Demands is attached as **Exhibit B**.

PLAINTIFFS' MOTION SEQUENCE 12

12. True to form, Mr. Menexas refused to provide any responses to the Post-EBT Demands notwithstanding multiple requests. On October 13, 2021, after being stymied by Mr. Menexas' intentional refusal to produce documents responsive to the Post-EBT Demands, Plaintiffs filed a motion which sought responses to the Post-EBT Demands. [Motion Seq. 012].

13. Ultimately, the Court issued a Decision and Order dated February 15, 2022, ("the

Mot. Seq. 12 Order”) wherein Mr. Menexas was compelled to provide responses to Plaintiffs’ post-EBT demands. [NYSCEF Doc. No. 282]. The Mot. Seq. 12 Order also directed the Menexas Defendants to identify and provide the name of the “aggressive tax accountant” hired by Menexas to re-organize the BTP LLC books and records. The Court also noted therein that “the Menexas Defendants have agreed to appear for a continued deposition up to the 7-hour limit”.

14. In an utter disregard of his discovery obligations and in an effort to cause further delay and cost to the Plaintiffs, Menexas produced approximately 43,000 pages of useless and irrelevant documents in response to the Post-EBT Demands. That production left Plaintiffs with the unsurmountable task of ascertaining what was produced, to which Post-EBT Demand was a document responded to and whether it complied with the Mot. Seq. 12 Order.

15. This prompted a further hearing with the Court on June 7, 2022. At that hearing, I indicated to the Court various issues in connection with what can only be categorized as a “document-dump” by the Menexas Defendants of irrelevant, useless, and non-responsive documentation that were purportedly responsive to the Post-EBT Demands. Indeed, the Court noted that “there has been no response, per se, to post E.B.T. Demands” and that the Menexas Defendants’ production can be summed up to: “here is 47,000 pieces of paper, you figure it out.” [See Transcript of Hearing NYSCEF Doc. No. 309, Tr. 57:16-24].

16. Also at that hearing, the Court specifically and expressly detailed the manner and method in which the Menexas Defendants should respond to the Post-EBT Demands: by providing an itemized statement which identifies, using bate stamps, where any such responsive documentation can be found. In fact, with respect to the Post-EBT Demands seeking certain credit card statements, the Court directed counsel for the Menexas Defendants to produce said documents “within a week” of the June 2022 Hearing, that being on or before June 14, 2022. [NYSCEF Doc. No. 309, Tr. 54:20-

22].

17. Additionally, on June 22, 2022, the Court “so Ordered” a Stipulation between the parties (“the June 2022 Order”) wherein Menexas agreed that he would provide to Plaintiffs a written itemized response to the Post-EBT Demands which shall reference and identify the documents which Menexas previously produced.

18. Notwithstanding the Court’s directives at the June 2022 Hearing, and the directives contained in the June 2022 Order, Menexas did not produce responses to the Post-EBT Demands in the manner and method required by the Court. I thereafter made repeated requests to Menexas’ counsel to produce the written itemization required under the June 2022 Order. My requests were ignored.

PLAINTIFFS’ MOTION SEQUENCE 15

19. Menexas’ repeated failure and refusal to comply with the June 2022 Order prompted Plaintiffs to incur more expense and cost by filing a further motion to seek sanctions and compel Menexas to provide the specific responses to the Post-EBT Demands which included references and identification to the prior document dump produced by Menexas. [see Mot. Seq. 15 NYSCEF Doc. No. 320-329].

20. After consideration of the merits of Plaintiff’s Motion Sequence 15, on April 19, 2023, the Court issued a further Decision/Order dated April 19, 2023 (“the April 2023 Order”) which granted Plaintiff’s Mot. Seq. 15, and directed Menexas, again to provide the written itemized responses to the Post-EBT Demands within fourteen (14) days. [NYSCEF Doc. No. 366]. As part of the April 2023 Order, the Court also sanctioned Menexas and awarded Plaintiffs a Judgment of attorney fees in the sum of \$15,000.00. [NYSCEF Doc. No. 371].

21. Having faced such a sanction from the Court, Menexas responded to the post-EBT Demands by letter from his counsel dated May 4, 2023. However, as part of that response and specifically to Post-EBT Demand (xix) which requested copies of all invoices and receipts reflecting charges and expenses that Menexas purportedly paid for any of the Restaurants, Menexas referred to a plethora of random receipts and documents within his prior document dump.

22. Certainly, the plethora of documents identified in the May 4, 2023 letter, in response to Post-EBT Demand (xix), did not reflect whether Menexas even paid any of these receipts. The response to Post-EBT Demand (xix) referenced every receipt produced in the entire action by Defendants. In fact, some documents were not even responsive and reflected random photos.

23. In essence, Menexas was again repeating his intentional and contumacious tactics which he has employed throughout this action — to obstruct discovery, present documents under false pretenses and to thwart any effort to discover the true financial transactions of the Restaurants.

PLAINTIFFS' THIRD NOTICE FOR DISCOVERY AND INSPECTION

24. Faced with yet another wanton and intentional effort by Menexas to prevent Plaintiffs from recovering the actual accounting records of the Restaurants, Plaintiffs served Menexas with a Third Notice for Discovery and Inspection, dated May 24, 2023, ("the Third NDI") requesting records (i) which reflect payments by Menexas of the invoices and receipts provide in his Response to Plaintiffs' Post EBT Demand (xix) and copies of documentation which reflect payments of the charges evidenced in the credit cards issued to Menexas which were identified in his Response to Post EBT Demand (xv) and (xx). Such records and documentation are relevant and essential to this case. A copy of the Third NDI (with proof of service) is attached hereto as **Exhibit C**.

25. True to form, and in a further disregard of his discovery obligations, Menexas failed

to respond to the Third NDI.

26. At a status conference held before the Court on September 27, 2023, Menexas, appearing *pro se*, was reminded of his obligation to provide responses to Third NDI. Menexas did not confirm at the conference whether he would respond to the Third NDI and, after further discussion with the Court and Menexas' failure to respond to the Third NDI, the Court approved the filing of the instant motion in light of Defendant's continuous noncompliance throughout the course of this proceeding.

PLAINTIFF'S MOTION SEQUENCE 18

27. After Menexas failed to provide responses to the Third NDI, Plaintiffs filed motion sequence 18 which sought, pursuant to C.P.L.R. §3216, the same relief sought hereunder - an Order: (i) pursuant to C.P.L.R. §3126, striking Defendant's Answer with Affirmative Defenses and Counterclaims, and prohibiting Defendant from introducing evidence at trial related to the claims in this action; (ii) pursuant to Part 130, awarding Plaintiffs the costs, expenses and attorneys' fees and costs incurred as a result of having to seek this application.

28. Menexas made claims that his medical condition prevented him from responding to the Third NDI. Nonetheless, The Court decided Plaintiff's Motion Sequence 18 and issued the Order finding that "Menexas has repeatedly failed to respond to demands and comply with court-ordered discovery over an extended period of time. However, in an effort to resolve this action on the merits and in consideration of external circumstances previously raised by Defendant George Menexas, this Court chooses not to exercise the drastic remedy of striking the answer at this time; instead providing Defendant George Menexas one additional opportunity to comply".

29. The Order also directed Menexas to serve full and complete responses to a any and all outstanding discovery demands within sixty (60) days from the date of service of a copy of this

Decision and Order with Notice of Entry. A Notice of Entry of the Order was served on Menexas on October 10, 2024. A copy of that Notice of Entry with an affidavit of service is attached as **Exhibit D**.

30. At this stage, Menexas was obligated to provide complete responses to the Third NDI and to provide the identity and name of the “aggressive tax accountant” whom he hired to re-vamp the books and records of BTP LLC.

GEORGE MENEXAS’ NON-COMPLIANCE WITH THE ORDER

31. On December 10, 2024, Menexas sent an email to my office which attempted to portray compliance with the Order. In that email, Menexas included an “Affidavit in Compliance with the Order”, dated December 4, 2024, (“the Affidavit”) which stated (a) that after diligent search and inquiry, he determined that the requested documents are not in his possession, custody or control; (b) if such documents exist, they are in the possession of third parties and that he has made reasonable efforts to cooperate in obtaining those documents; and (c) it is unknown whether such documents exist or ever existed and that he is unaware of their existence or possible location; and (d) that he has provided documents and information currently in his possession, custody and control. A copy of Menexas’ Affidavit is attached hereto as **Exhibit E**.

32. In addition to the Affidavit, Menexas provided numerous documents which, as he has done in the past, were not responsive to the Third NDI. These documents, which amount to nearly 600 pages of worthless and unresponsive documents, include unauthenticated logins to bank accounts and purported computer files. This production can only be characterized as another document dump by Menexas which is made to feign compliance with the Order. A sample of these documents is attached as **Exhibit F**.

33. After reviewing these unresponsive documents, I wrote a letter to Menexas again outlining his failure to comply with his discovery obligations herein. I noted that his December 10, 2024 production was unresponsive to the Third NDI. Moreover, he had still failed to provide the name and contact information of the “aggressive tax accountant” whom he had hired to reorganize the books and records of BTP LLC between October 2018 and February 2019 as stated by his prior attorney and as confirmed by his brother, co-defendant Steve Menexas. A copy my letter to Menexas dated December 10, 2024 is attached hereto as **Exhibit G**.

34. Despite his proclaimed lack of possession of documents, as set forth in his Affidavit, and his inability to obtain such documents from third parties, Menexas is able to produce such materials. The payments by Menexas of the invoices identified in item 1 of the Third NDI would be obtainable online from his banking records. Similarly, the evidence of payments by Menexas of the credit card statements identified in item 2 of the Third NDI would also be obtainable online from his banking records. Still, and despite the ability to produce such evidence, Menexas has refused to do so.

35. Most egregious however is his failure to again, despite many requests in the past, to identify and provide the name of the “aggressive tax accountant” whom he retained to re-vamp the books and records of BTP LLC. This information has been known by Menexas throughout this lawsuit but he has refused to provide it.

36. It would be an understatement to say that the identity of this account is a thorny issue for the Menexas Defendants. As evidenced during the deposition of Steve Menexas, taken on June 22, 2021, there was an outright refusal and active effort by the Menexas Defendants’ then attorney, Todd Kremin, Esq., to obstruct and prevent Steve Menexas from disclosing the identity of this accountant. The transcript of that deposition demonstrates that, when asked to provide the name of

this accountant, Mr. Kremin interfered with the line of questioning, made blatantly inappropriate speaking objections, and tried to discontinue the line of questioning by requesting breaks while the question was pending. In fact, Mr. Kremin, while this line of questioning was taking place during the remote deposition conducted via Microsoft Teams, purposefully and intentionally cut-off his client's camera so that his client would not provide a response. Mr. Kremin then made the obviously incredulous claim that his client needed a bathroom break. This was done intentionally to thwart my line of questioning.

37. When the deposition resumed, after Steve Menexas likely had time to speak with Mr. Kremin off the record and be coached regarding this subject, Steve Menexas testified that there was in fact an accountant hired by the Menexas Defendants to reorganize the books of BTP LLC. The name of that accountant was again requested from the Menexas Defendants and Steve Menexas confirmed that Mr. Kremin "could send you his address and the name". That information was again formally requested on the record but has never been provided by the Menexas Defendants. Copies of the relevant pages of the transcript from the deposition of Steve Menexas are attached as **Exhibit H**.

38. All this lays bare that the Menexas Defendants are aware of the name and identity of the "aggressive tax accountant" who they hired to re-vamp the books and records of BTP LLC at the time this lawsuit was filed. It also demonstrates that they, and their prior attorney, are hell bent not to provide the identity of this accountant as demonstrated by their conduct during Steve Menexas' deposition. The Court must not allow this conduct to stand. Menexas has refused to produce the name and identity of this individual to the severe detriment and prejudice of Plaintiffs. This information was requested at least since July 2021 but has still not been provided.

39. Based on the blatant and repeated failings and misconduct in the discovery process, the Court should infer that Menexas' conduct herein is nothing short of willful and contumacious

thereby warranting sanctions and the relief requested herein.

40. Menexas continues his streak of obstructive conduct and of delaying discovery in this action. Menexas' noncompliance has resulted in the Plaintiffs' having to spend unnecessary attorneys' fees and expenses. The Court should say that enough is enough. Sanctions must be levied against Menexas and his Answer and Counterclaims should be stricken. He should also be prevented from producing any evidence at the trial of this action.

41. Finally, this Court must Order Menexas to pay for the attorneys' fees and costs incurred by the Plaintiffs in bringing a fourth motion addressing Menexas' non-compliance with his discovery obligations. Such non-compliance is willful and intentionally undertaken to obstruct Plaintiffs' ability to gather evidence in this action and to cause Plaintiffs to incur unnecessary cost and expense.

42. I affirm this 6th day of January, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

WHEREFORE, it is respectfully submitted that the Court issue an Order: (i) pursuant to C.P.L.R. §3126, striking Menexas' Answer with Affirmative Defenses and Counterclaims, and prohibiting Menexas from introducing evidence at trial related to the claims in this action; (ii) pursuant to Part 130, awarding Plaintiffs the costs, expenses and attorneys' fees and costs incurred as a result of having to seek this application; and (iii) for such other and further relief as this Court may deem just and proper.

Dated: New York, New York
January 6, 2025



PETER MOULINOS

**CERTIFICATION PURSUANT TO
UNIFORM CIVIL RULE FOR THE SUPREME COURT 202.8-b
AND RULE 17 OF THE RULES OF THE COMMERCIAL DIVISION**

IT IS HEREBY CERTIFIED pursuant to Uniform Civil Rules for The Supreme Court 202.8b and Rule 17 of the Rules of the Commercial Division (together, the "Rules") that the foregoing AFFIRMATION IN SUPPORT was prepared on a word processor using MS Word. A proportionally spaced typeface was used.

This document complies with the word count limit of the Rules and the total number of words in this AFFIRMATION IN SUPPORT, inclusive of point headings and footnotes, is 3,606.

Dated: New York, New York
January 6, 2025



PETER MOULINOS

Attachment No. 3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
ANTONIOS DAGOUNAKIS, VASILIOS LAZARIDIS,
and HENRY STREET PLAZA LLC,

Plaintiffs,

AFFIDAVIT IN SUPPORT

-against-

Index No. 612624/2018

BAY TERRACE PLAZA, LLC, GEORGE MENEXAS,
STEVE MENEXAS and COMMACK PLAZA LLC,

Defendants.

-----X
George Menexas, being duly sworn, deposes and says:

1. I am one of the defendants in this action and I am representing myself pro se.
2. On January 23, 2025, I was scheduled to appear at 11:00am for a court conference in this matter.
3. I arrived late to the conference due to circumstances beyond my control. Please see Exhibit 1 which GPS shows arrival of 11:57am.
4. My children were off from school that day, and my babysitter was running late requiring me to find other care before coming to court which caused my delay. I did attempt to contact the court when first learning of this which Exhibit 2 shows call at 9:47am to the chambers.

5. I was unaware of Plaintiffs' Motion Seq. 019, filed on January 6, 2025, which sought to strike my Answer and prevent me from presenting evidence at trial.
6. I did not receive electronic notice of this motion (Plaintiffs' Motion Seq. 019), as agreed to in the September 27, 2023 conference
7. I was also unaware of Plaintiffs' NOTICE OF SETTLEMENT W/PROPOSED JDGMT/COUNTER JDGMT filed on October 10, 2024 until after the October 22, 2024 scheduled appearance which prevented me from opposing various charges in invoices.
8. I did not receive electronic notice of this notice, as agreed to in the September 27, 2023 conference
9. I have fully complied with the Court's order of September 2024, despite Plaintiffs' counsel's false claims to the contrary. Exhibit 3 is email sent to Plaintiff attorney regarding scheduling of deposition and again requesting a copy of deposition transcript which was rejected and request of deposition transcript once again ignored. The deposition transcript would allow defense of allegations as well as show if the deposition requirement of 7 hours was met.
10. I have evidence of serious misconduct by Plaintiffs' counsel, which I believe is relevant to this matter.
11. I request the opportunity to respond to Motion Seq. 019 and provide evidence to support my position.
12. I also request that Plaintiffs' counsel be ordered to provide me with copies of my deposition transcript, a list of documents obtained in this matter and the dates collected along with the party obtained from, a copy of the QuickBooks subpoena production.

Name: Giorgios Menexas

Date: 02/05/2025

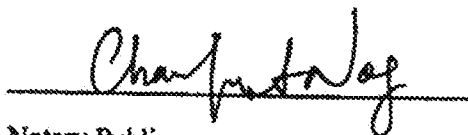


Signature

Address: 4 Elm Sea Ln, Manhasset, NY, 11030

Sworn to before me this

5th day of February, 2025



Notary Public

Yuet Noy Bonnie Chan
Notary Public - State of New York
No. 01CH6272722
Qualified in New York County
My Commission Expires 11/19/2028

