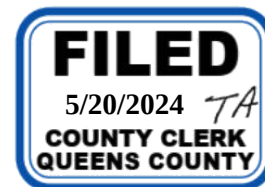


Chungsheng Cheng v Luxor Motor Cars , Inc.
2024 NY Slip Op 35439(U)
May 17, 2024
Supreme Court, Queens County
Docket Number: Index No. 706871/2019
Judge: Maurice E. Muir
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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT – QUEENS COUNTY

Present: HONORABLE MAURICE E. MUIR
Justice



CHUNGSHENG CHENG,

IAS Part - 42

Plaintiff,

Index No.: 706871/2019

-against-

Motion Date: 3/21/24

LUXOR MOTOR CARS, INC. and
CENTRAL AVENUE CHEVROLET

Motion Cal. No. 9

Defendants.

Motion Seq. No. 1

The following electronically filed (“EF”) documents read on this motion by Luxor Motor Cars, Inc. (“Luxor”) and Central Avenue Chevrolet (“CA Chevrolet”) (collectively, the “defendants”) for an order 1) pursuant to CPLR § 3126 striking the plaintiff’s complaint; 2) pursuant to CPLR § 3126(2) precluding the plaintiff from testifying and from providing any affidavits, sworn statements, or other evidence, including in support of or in opposition to any motions and at the time of trial; and 3) granting for further relief as this court may deem just, proper and equitable.

	Papers Numbered
Notice of Motion-Affirmation-Exhibits-Service.....	EF 17 - 27

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This is an action to recover damages for based upon an alleged breach of contract. In particular, Chungsheng Cheng (“Mr. Cheng” or “plaintiff”) alleges that on August 10, 2018, he went to Luxor with the intention of purchasing a new vehicle for use as a “for-hire black car.” He executed a contract for the purchase of a Camry. However, on September 10, 2018, Luxor informed Mr. Cheng it was no longer able to provide a New York City Taxi and Limousine Commission (“TLC”) compliant license plate for the Camry for-hire black car. In the alternative,

Luxor offered to substitute the Camry for a Sienna. As a result, on September 21, 2018, Mr. Cheng paid an additional \$5,000 as down payment to be applied to a loan from Bank of America ("BOA"). However, upon learning the Sienna was a used vehicle incapable of TLC registration, and learning of a rescission by TLC to provide any new TLC licenses, Mr. Cheng cancelled the sale. Notwithstanding the same, Luxor refused to either cancel the sale or return Mr. Cheng's down payment.

As a result, on April 17, 2019, the plaintiff commenced the instant action; and on June 27, 2019, issue was joined. Thereafter, on November 18, 2019, the court issued a preliminary conference order ("PCO"), which instructed the parties to conduct examinations before trial ("EBT") on or before February 26, 2020. Moreover, the PCO stated, in relevant part, that "a Bill of Particulars ("BP") shall be served by plaintiff on or before 45 days of the order. Additionally, on July 20, 2021, the court issued a Compliance Conference Order ("CCO"), which states, in relevant part all parties shall appear for any Examination Before Trial which has been previously notice within thirty (30) days from the date hereof: Now, defendants seek the above-mentioned relief. In particular, the defendants contend that the plaintiff failed to either provide a bill of particulars or respond to its demand for the production of documents.

Under the law, CPLR § 3101(a)(1) provides, in relevant part, that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." The terms "material and necessary" in this statute "must be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Matter of Kapon v. Koch*, 23 NY3d 32, 38 [2014], quoting *Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]; see also *Brito v. Gomez*, 33 NY3d 1126 [2019]). At the same time, a party is "not entitled to unlimited, uncontrolled, unfettered disclosure" (*Geffner v. Merry Med. Ctr.*, 83 AD3d 998, 998 [2d Dept 2011]; *Quinones v. 9 E. 69th St., ILC*, 132 AD3d 750, 750 [2d Dept. 2015]). "It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Crazytown Furniture v. Brooklyn Union Gas Co.*, 150 AD2d 420, 421 [2d Dept. 1989]; see *Quinones v. 9 E. 69th St., ILC*, 132 AD3d at 750, supra). Furthermore, pursuant to CPLR § 3042(a), it states, in pertinent part, the following:

Within thirty days of service of a demand for a bill of particulars, the party on whom the

demand is made shall serve a bill of particulars complying with each item of the demand, except any item to which the party objects, in which event the reasons for the objection shall be stated with reasonable particularity. The assertion of an objection to one or more of the items in the demand shall not relieve the party on whom the demand is made from the obligation to respond in full within thirty days of service of the demand to the items of the demand to which no objection has been made.

Moreover, pursuant to CPLR § 3042 (c), where a party fails to respond to a demand for a bill of particulars, the party seeking the bill of particulars may move to compel compliance. Additionally, if the failure to provide particulars is deemed to be willful, "the court may make such final or conditional order with regard to the failure or refusal as is just, including such relief as is set forth in [CPLR 3126]" (CPLR § 3042(d)). Here, the court finds that the plaintiff has failed to provide a Bill of Particulars and to respond to the defendants' demand for the production of document -- in accordance with the PCO and CCO. However, the court does not find that sanctions are warranted at this juncture. Yet, if the plaintiff fails to comply with this order, the court will be compelled to either dismiss the instant action or preclude plaintiff from testifying at the time of trial. (*see Von Maack v. Wyckoff Heights Medical Center*, 195 AD3d 769 [2d Dept 2021]; *Bouri v. Jackson*, 177 AD3d 947 [2d Dept 2019]; *Brito v. Gomez*, 33 NY3d 1126 [2019]; *Honghui Kuang v. MetLife*, 159 AD3d 878 [2d Dept 2018]; *Sheikh v. Poplardo*, 207 AD3d 775 [2d Dept 2022]; *Follors v. TI v. Ozone Park Storage, LLC*, 209 AD3d 843 [2d Dept 2022]).

Accordingly, it is hereby

ORDERED, that defendants' motion to dismiss the complaint, pursuant to CPLR § 3126, is denied without prejudice; and it is further,

ORDERED, that plaintiff shall serve his verified Bill of Particulars upon defendants on or before July 25, 2024; and it is further,

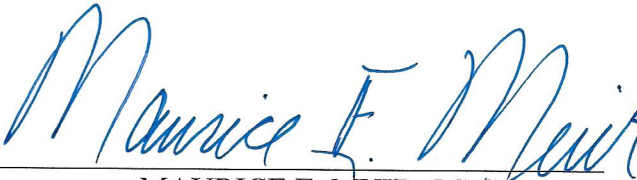
ORDERED, that plaintiff shall provide the following documents to the defendants on or before July 25, 2024: a) copies of the title documents in the plaintiff's possession pertaining to the subject Toyota Camry vehicle plaintiff purchased on or about August 10, 2018; b) copies of any agreements, contracts, memoranda or correspondence showing the name of the "salesman" the plaintiff refers to in the Statement of Facts in his Complaint; and it is further,

ORDERED, that if plaintiff fails to comply with the directives of this Order, he shall be precluded from presenting evidence and testimony at the time of trial and precluded from making or opposing any dispositive motions; and it is further,

ORDERED, that the defendants shall serve a copy of this decision and order with notice of entry upon the plaintiff, via first mail and NYSCEF, on or before May 30, 2024.

The foregoing constitutes the decision and order of the court.

Dated: May 17, 2024
Long Island City, New York


MAURICE E. MUIR, J.S.C.

