

APOS US Mgt., Inc. v NS Grand St. Mgt. Servs. Inc.

2025 NY Slip Op 31765(U)

May 13, 2025

Supreme Court, New York County

Docket Number: Index No. 651690/2024

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

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INDEX NO. 651690/2024

APOS US MANAGEMENT, INC.,

MOTION DATE 06/01/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

NS GRAND STREET MANAGEMENT SERVICES INC.,
NATHAN SKLAR, MARC J. ROSENBLATT

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for DISCOVERY

APPEARANCES:

Denlea & Carton LLP, White Plains, NY (Craig Matthew Cepler, Esq., of counsel), for plaintiff.

Carlos M. Carvajal, Esq., New York, NY (Carlos Mario Carvajal, Esq., of counsel), for defendants.

EMILY MORALES-MINERVA, J.S.C.

In this action for, among other things, breach of contract, plaintiff APOS US MANAGEMENT, INC. (plaintiff) moves, by notice of motion (sequence number 001) for an order, pursuant to CPLR § 3124, compelling defendants NS GRAND STREET MANAGEMENT SERVICES INC. and NATHAN SKLAR (defendants) to respond to outstanding discovery demands. Defendants do not appear or submit opposition.

For the reasons set forth below, plaintiff's motion (seq.

no. 001) is denied entirely.

BACKGROUND

Plaintiff APOS US MANAGEMENT, INC. (plaintiff), a manufacturer of medical devices, offered its products for sale through defendant NS GRAND STREET MANAGEMENT SERVICES INC. (NSGS), a physical therapy provider, which is operated by defendant NATHAN SKLAR (Sklar).¹ Plaintiff commenced the instant action against defendants after defendants allegedly retained most of the revenue it received for selling plaintiff's medical devices (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 002, Complaint).

On May 29, 2024, defendants answered (see NYSCEF Doc. No. 004, Answer). On January 22, 2025, plaintiff served interrogatories and a document demand upon defendants (see NYSCEF Doc. No. 14, Plaintiff's First Set of Requests for Production of Documents, dated January 22, 2025, and Doc. No. 15, Plaintiff's First Set of Interrogatories, dated the same). Thereafter, on February 19, 2025, defendant NSGS filed for bankruptcy (see NYSCEF Doc. No. 20, Notice of Chapter 11

¹ Plaintiff discontinued this action against defendant MARC J. ROSENBLATT (see NYSCEF Doc. No. 10, Stipulation of Discontinuance Without Prejudice as between Plaintiff and Defendant Rosenblatt, and Doc. No. 24, Order Discontinuing Action against Defendant Rosenblatt, dated April 29, 2025).

Bankruptcy Case, dated February 19, 2025).

On February 25, 2025, plaintiff sent a letter to defendants demanding responses to plaintiff's discovery demands (see NYSCEF Doc. No. 16, Letter to Defendants, dated February 25, 2025). Defendants failed to respond to the same.

On April 29, 2025, defendants' bankruptcy petition was dismissed (see NYSCEF Doc. No. 23, Order Dismissing Chapter 11 Case [Hon. Lisa G. Beckerman], dated April 29, 2025).

Now, plaintiff moves (seq. no. 001) for an order, pursuant to CPLR § 3124, compelling defendants to respond to the outstanding discovery demands (see NYSCEF Doc. No. 11, Notice of Motion, dated March 13, 2025).

ANALYSIS

"The filing of a bankruptcy petition automatically stays the commencement of any action or a proceeding to recover a claim against the debtor that arose before the commencement of the bankruptcy proceeding" (Levant v Natl. Car Rental, Inc., 33 AD3d 367, 368 [1st Dept 2006], citing 11 USC § 362 [a][1]). The stay is mandatory, it applies in all state and federal courts, and it takes effect immediately (see id.; see also Emigrant Sav. Bank v Rappaport, 20 AD3d 502, 503 [2d Dept 2005]). It stays all proceedings in an action, including discovery (see generally

11 USC § 362 [a] [1]; see also Rivera v The Great Atlantic & Pacific Tea Company, 2017 WL 10636080, *2 [Sup Ct, Bx Cnty 2017], citing Maynard v George A. Fuller Co., 236 AD2d 300 [1st Dept 1997]). Only the bankruptcy court has jurisdiction to grant relief from this stay (Joyner v City Carter Leasing Inc., 211 AD3d 406, 407 [1st Dept 2022]).

Here, plaintiff's motion to compel (seq. no. 001) was filed subsequent to defendant NSGS filing for bankruptcy, and prior to its dismissal. Therefore, the entire proceeding was stayed as to defendant NSGS, including discovery, and the motion (seq. no. 001) must be denied.

In any event, even though discovery was stayed as to defendant NSGS only, the court also denies plaintiff's application to compel discovery as to defendant Sklar.

While the party seeking disclosure may move, pursuant to CPLR § 3124,² to compel a response if a person fails to respond to a demand or interrogatory, "no motion [relating to disclosure] shall be filed with the court unless there have been served and filed with the motion papers . . . an affirmation that counsel has conferred with [] the opposing party in a good faith effort to resolve the issues raised by the motion"

² CPLR § 3124 provides, "If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response."

(Uniform Civil Rules for the Supreme Court and County Court [22 NYCRR] § 202.7). Further, "[t]he affirmation of good faith effort [] shall indicate the time, place and nature of the consultation and the issues discussed and any resolutions or shall indicate good cause why no such conferral with counsel for opposing parties was held" (22 NYCRR § 202.7 [c]). Failure to provide an affirmation of good faith which substantively complies with 22 NYCRR § 202.7 (c) warrants denial of the motion (see Cashbamba v 1056 Bedford LLC, 172 AD3d 415, 416 [1st Dept 2019]; see also 241 Fifth Ave. Hotel, LLC v GSY Corp., 110 AD3d 470, 471-472 [1st Dept 2013])).

While plaintiff claims to have made efforts to resolve the discovery issues, the affirmation of good faith presented to the Court does not specifically describe said efforts outside of one letter being sent to defendants (see NYSCEF Doc. No. 16, Letter to Defendants, dated February 25, 2025, and Doc. No. 17, Affirmation of Good Faith, describing the efforts made as emailing said letter to counsel). One form letter is insufficient to satisfy the good faith affirmation requirement (see, e.g., Kelly v New York City Tr. Auth., 162 AD3d 424 [1st Dept 2018] [providing that a discovery-seeking party's failure to comply with the good faith affirmation requirement will lead to the denial of a discovery-related motion])).

Accordingly, it is

ORDERED that motion (sequence no. 001) of plaintiff APOS US MANAGEMENT, INC. is denied entirely; it is further

ORDERED that this case is scheduled for a virtual status conference in Part 42M, on August 11, 2025, at 12:00 P.M.; it is further

ORDERED that, within (10) days of this order, plaintiff APOS US MANAGEMENT, INC. shall serve a copy of this order on defendants, and plaintiff shall also file such notice via NYSCEF with proof of such service.

05/13/2025
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: