

Bitton v Cavallo

2025 NY Slip Op 33054(U)

July 31, 2025

Supreme Court, New York County

Docket Number: Index No. 656107/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

ALON BITTON individually and derivatively on behalf of 101
ORIENT, LLC,

Plaintiff,

- v -

MICHAEL CAVALLO,

Defendant.

-----X

INDEX NO. 656107/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 23, 24, 25,
27, 28

were read on this motion to/for DISCOVERY.

Plaintiff's motion to strike is granted as described below.

Background

Plaintiff contends that both he and defendant are fifty percent owners of 101 Orient LLC. He insists that this entity's sole asset was a property located in Jersey City, New Jersey and that when this property was sold to a third-party, plaintiff allegedly did not receive his full share of the proceeds. Plaintiff claims that he is entitled to another \$40,000 from the sale of the property.

In this motion, plaintiff observes that he served discovery demands on defendant on May 27, 2024 and defendant has yet to respond. Plaintiff emphasizes that the parties entered into a discovery stipulation on November 6, 2024 that set a December 31, 2024 deadline for defendant to respond, a deadline that defendant ignored. He points out that his counsel sent a good faith letter to defendant's attorney in January 2025 to no avail. Plaintiff observes that this Court then issued an order following a conference on April 8, 2025 which ordered all paper discovery to be

completed by May 9, 2025 (NYSCEF Doc. No. 15). It also contemplated that defendant's counsel would move to withdraw, if necessary, by that same date (*id.*). Plaintiff argues that defendant did nothing—he did not turn over any documents nor did his counsel seek to withdraw.

In opposition, defendant's counsel insists that he has drafted a response to plaintiff's discovery demands and “will serve a copy on plaintiff's counsel tomorrow or at the pleasure of the Court up load [sic] a copy to NYSCEF” (NYSCEF Doc. No. 27, ¶ 3). Counsel for defendant admits that “I started preparing the Response back in May 2025, but did not complete [it] until now for a couple of reasons” (*id.*). Defendant contends that he is still trying to obtain some of the documents demanded and counsel for defendant claims he was trying to avoid piece-meal discovery submissions.

Defendant's attorney insists he was having trouble communicating with his client from June 2024 through April 2025. Counsel for defendant also observes that he is transitioning towards retirement and that he laid off his administrative assistant.

The Court did not consider plaintiff's reply, which was not provided for in the order to show cause.

Discussion

The Court grants the motion. Defendant has “offered no excuse for [his] repeated noncompliance with the court's disclosure orders, and [his] conduct throughout the course of this litigation has been dilatory, evasive, obstructive and ultimately contumacious. It is a court's prerogative to control its calendar and expeditiously dispose of the volume of cases before it” (*Arts4All, Ltd. v Hancock*, 54 AD3d 286, 286 [1st Dept 2008], *affd*, 12 NY3d 846 [2009], and *affd*, 13 NY3d 812 [2009] [internal quotations and citations omitted]).

The fact is that plaintiff served the subject document demands back in May 2024 and yet, still, as of July 28, 2025 (the date of defendant's opposition), defendant had yet to respond despite multiple court orders to respond. That defendant might send over a response soon is not sufficient- the deadlines have all long passed. Moreover, the opposition suggests that the response will not be complete as defendant is "still in the process of obtaining some of the documents demanded" (NYSCEF Doc. No. 27, ¶ 5). The Court cannot conceive of a better example of contumacious behavior than ignoring deadlines and then, when confronted with a motion, insisting that a partial response might be forthcoming at some point. That does not show a good faith effort to meaningfully participate in discovery.

And defendant failed to raise a reasonable excuse for the abject failure to comply with discovery obligations. That defendant was not communicating with his counsel might be a reason for counsel to withdraw—an action contemplated in the April 8, 2025 Court order. But counsel did not seek to withdraw and instead ignored the Court's May 9, 2025 deadline. Defendant's other excuses similarly do not justify the failure to comply with Court deadlines. These demands were served more than a year ago—none of the reasons offered by defendant for his failure to turn over anything justifies such a long delay particularly given the relatively narrow focus of the demands.

The Court, however, declines to impose sanctions on defendant. In this Court's view, the proper remedy is simply to strike the answer. Sanctions are reserved for more flagrant conduct, such as willfully misleading an opposing party or the Court, not just ignoring multiple deadlines.

The Court observes that the complaint, which is verified by plaintiff, seeks \$40,000; as the answer is stricken, the Court awards plaintiff a judgment in that amount plus interest from the

date of the sale of the property—April 30, 2021. However, the Court denies the request for legal fees in the complaint as there was no basis for such fees detailed in the pleading.

Accordingly, it is hereby

ORDERED that plaintiff’s motion is granted to the extent that defendant’s answer is hereby stricken along with his counterclaims and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$40,000 plus statutory interest from April 30, 2021 along with costs and disbursements upon presentation of proper papers therefor.

7/31/2025

DATE



ARLENE P. BLUTH, J.S.C.

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