Oakshire Props., LLC v Argus Capital Funding, LLC

2025 NY Slip Op 34287(U)

September 18, 2025

Supreme Court, Ontario County

Docket Number: Index No. 128649-2021

Judge: Daniel J. Doyle

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STATE OF NEW YORK
SUPREME COURT COUNTY OF ONTARIO

OAKSHIRE PROPERTIES, LLC, NORTH AMERICAN PERISHABLES COMPANY, LLC, OAKSHIRE NATURALS GP, LLC, OAKSHIRE NATURALS, LP and GARY SCHROEDER,

Plaintiffs,

Index # 128649-2021

-vs-

ARGUS CAPITAL FUNDING, LLC, ANTHONY LODATI, ROYAL CAPITAL FUNDING, LLC, JAY ROGERS, and PARK AVENUE RECOVERY, LLC,

Defendants.

Special Term
July 8, 2025

Appearances on Submission

William F. Costigan, Esq., Costigan Law PLLC- for Plaintiffs
Christopher R. Murray, Esq., Murray Legal PLLC- for Defendants

DECISION

Doyle, J.

This is a merchant advance agreement case. Pending before the Court are two motions: (1) Defendants' motion pursuant to CPLR 3126 for an order striking the Plaintiffs' Complaint for willful and contumacious refusal to produce discovery and awarding Argus

and Park Avenue their reasonable attorneys' fees; and (2) Plaintiffs' cross motion to compel disclosure and appoint a referee.

For the reasons set forth herein, Defendants' motion is **GRANTED**, and Plaintiffs' cross motion is **DENIED**.

LAWSUIT FACTS

This merchant advance lawsuit was commenced by the merchant and principal/guarantor. Plaintiffs note that CPLR §3218 was amended to prohibit taking judgment by confession against out-of-state residents and businesses to remedy abuses in the use of confessions of judgment by creditors against out-of-state debtors.

Plaintiffs contend that in the summer of 2018, the Entity Plaintiffs were adversely impacted by Chinese and Canadian mushroom imports, which reduced their sales by more than half. In early July 2018, Jay Rogers, a broker who operated as Royal Capital Funding, allegedly contacted Plaintiffs' principal, Gary Schroeder, about funding for the Oakshire entities that would tide them over until they rebuilt their sales. An agreement was entered into on August 15, 2018. Plaintiffs commenced this litigation contending that the true nature of the transaction was a loan, not a merchant advance agreement.

The Oakshire entities and individual guarantor Gary Schroeder also executed an Affidavit of Confession of Judgment ("COJ") that, by its terms, enabled Argus to summarily take Judgment against the signatories without commencing a lawsuit. The COJ was executed before a Notary Public in Chester County, Pennsylvania.

It is alleged that Oakshire paid the required amount every business day via ACH withdrawal until December 18, 2018. At that point, it is alleged that the Oakshire entities experienced a sharp contraction in sales that made further payments of the Daily Amount unsustainable. In mid-December, the Oakshire entities allegedly requested that the Daily Amount be adjusted downward. It is alleged that Argus categorically refused.

On December 20, 2018 Argus proceeded to take an ex parte judgment by confession against the plaintiffs in the Supreme Court of the State of New York, County of Ontario. The Judgment was entered on January 3, 2019 for the unpaid balance on the Loan, which Argus claimed was $319,993.20, plus attorney fees of $105,597.75, and costs of $225.00.

On August 31, 2021, the Court (Karle, J.) granted Defendants leave to file a late Answer to the Amended Complaint. On November 28, 2022, the Court (Karle, J.) denied a motion to disqualify defense counsel.

PROCEDURAL HISTORY

This action was commenced on June 2, 2021, seeking (1) to vacate the Judgment that had been entered against them based on their breach of the Purchase and Sale of Future Receipts Agreement entered into between the parties and (2) compensatory, direct, and consequential damages and double and/or treble damages. The Plaintiffs filed an Amended Complaint on February 24, 2021. The Amended Complaint alleges the following causes of action: vacate the judgment, usury, usury and extortionate credit under Pennsylvania law, fraudulent inducement, fraud, substantive unconscionability, RICO U.S.C. §1962, and

RICO U.S.C. §1962(d). A previous motion to dismiss was granted on the First Cause of Action only as to the usury allegations, granted as to the Second and Third Causes of Action, and denied as to the Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action. This decision was upheld by the Fourth Department on July 26, 2024. In so doing, the Fourth Department stated that the Amended Complaint sufficiently alleged that the underlying transaction is a usurious loan subject to usury laws.

During the period of time since the inception of this action and the Court's Decision on the motion to dismiss, both parties served various discovery demands. Defendants served a Demand for a Verified Bill of Particulars on January 16, 2022 and a Demand for Documents on January 16, 2022. In response, Plaintiffs served a Bill of Particulars on August 15, 2022. Plaintiffs' Bill of Particulars contained blanket objections to providing particularized facts and conclusory responses and legal arguments. On May 10, 2023, Defendants served a second round of discovery demands: a Demand for a Supplemental Verified Bill of Particulars, a Notice to Admit, and a second demand for documents. Additionally, Defendants served Deposition Notices to each of the five Plaintiffs, which were scheduled to take place between June 29 and July 5, 2023.

Defendants' first motion to strike was determined by Decision dated February 2, 2024. The motion was denied, with the Court finding that the drastic remedy was not warranted at the time, and the parties should continue to work towards the completion of discovery. After discovery responses remained elusive, Defendant's brought a second motion to strike, which was determined by a Decision dated September 26, 2024. The second motion to strike decision again denied dismissal, noting that the Fourth

Department (as noted *supra*) had recently weighed in on the nature of the underlying transaction between the parties in an appellate decision and finding that the interests of justice mandated a determination on the merits. The Court then set an Amended Scheduling Order requiring that all fact discovery, including depositions and updates to previously provided responses, be completed by January 24, 2025.

Prior to the January 24, 2025 deadline, Defendants' counsel filed a letter to the Court describing Plaintiffs' continued non-compliance. In response, on January 23, 2025, the Court ordered that Plaintiffs produce outstanding document discovery by January 30, 2025. Plaintiffs did not abide in good-faith with the Court's Order. Defense counsel contends that on January 22, 2025, Plaintiffs' counsel e-mailed Defendants' counsel bank statements belonging to a non-party – "Oakshire Holdings, Inc." for September 2022 through December 2024. These were not records for any named Plaintiff, and indeed, Defendants continue to assert that Plaintiffs have not produced bank records for the Oakshire Entities themselves.

At a conference with the Court on February 10, 2025, the Court directed that the parties each issue a letter to the other regarding outstanding discovery, with copy to the Court. On March 10, 2025, Defendants, in response to Plaintiffs' February 25, 2025 letter, provided Plaintiffs with specific bates references to Defendants' production vis-à-vis the location of documents relevant to specific demands, and on March 11, 2025, provided a privilege log and additional relevant documents. In each email, Defendants' counsel requested information from Plaintiffs' regarding their promised production and services of responses and objections.

Plaintiffs' counsel responded on March 24, 2025, thirteen minutes before a scheduled virtual status conference with the Court. In that e-mail, Plaintiffs' counsel represented that Plaintiffs had a few documents relating to damages, which were attached. However, this additional production was duplicative of previously produced documents, from a time period after the filing of the Complaint, and composed of documents unrelated to the Defendants.

At that conference, the Court instructed that both parties were permitted to make a motion to strike, which led to the pending motions.

LEGAL ANALYSIS

CPLR §3126

As noted, this matter has come before the Court many times due to issues during the discovery process.

CPLR § 3101(a) provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." The words "material and necessary" are to be given a broad and liberal interpretation, requiring the disclosure of any facts "which will assist preparation for trial by sharpening the issues and reducing delay and prolixity." Allen v. Crowell-Collier Publishing Co., 21 N.Y.2d 403, 406 (1968). Indeed, it is the aim of pretrial discovery, "that each party should know as much about the other's claim as is fairly and appropriately possible." Padilla v. Damascus, 16 A.D.2d 71, 73 (1st Dept. 1962), *aff'd*, 12 N.Y.2d 1059 (1963). The nature and degree of the penalty to be imposed pursuant to CPLR §3126 lies within the sound

discretion of the trial court. See Kihl v. Pfeffer, 94 N.Y.2d 118, 122 (1999); Pearl v. Pearl, 266 A.D.2d, 366, 366 (2nd Dept. 1999) (noting "[i]t is well settled that a court has broad discretion in determining the nature and degree of the penalty to be imposed where a party has refused to comply with discovery demands"). The striking of a pleading may be appropriate where there is a clear showing that the failure to comply with discovery demands is willful or contumacious. See Montemurro v. Memorial Sloan-Kettering Cancer Ctr., 94 A.D.3d 1066 (2nd Dept. 2012). The willful or contumacious character of a party's conduct can be inferred from the party's repeated failure to respond to demands or to comply with discovery orders, coupled with inadequate excuses for such default. See id.

CPLR §3126 provides:

> If any party...refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought 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...
>
> (2) an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or
>
> (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.

CPLR § 3126 has been construed liberally to give Courts the discretion to dismiss a party's pleadings as a sanction for dilatory conduct in response to discovery demands. See

e.g. Zelz v. Wetanson, 67 N.Y.2d 711 (1986); Lowitt v. Korelitz, 152 A.D.2d 506 (1st Dept. 1989); Berman v. Szpilzinger, 180 A.D.2d 612 (1st Dept. 1992).

"The nature and degree of a sanction to be imposed on a motion pursuant to CPLR 3126 is within the discretion of the court, and the striking of a pleading is appropriate only upon a clear showing that a party's failure to comply with a discovery demand or order is willful, contumacious, or in bad faith." Mosey v. Cnty. of Erie, 117 A.D.3d 1381, 1384 (2014). Dismissal pursuant to CPLR §3126 was upheld where a party "failed repeatedly to respond to discovery demands and disregarded orders regarding discovery" for ten years and did not establish a reasonable excuse for the conduct. Almontaser v. Roswell Park Cancer Inst. Corp., 239 A.D.3d 1432 (4th Dept. 2025). Dismissal is, of course, considered a "harsh remedy." Place v. Chaffee-Sardinia Volunteer Fire Co., 143 A.D.3d 1271, 1272 (4th Dept. 2016) (citation omitted).

Defendants contend that outstanding discovery includes: 1) various financial records (bank statements, invoices, bills, transaction histories, and receipts, as well as each Plaintiff's tax records showing their revenue and income that would be necessary to show performance, breach and Plaintiffs' alleged damages); 2) various communications relevant to the claims; 3) Defendants' twelfth through thirty-fourth document demands sought copies of the documents relevant to specific allegations in the Complaint; and 4) a Supplemental Bill of Particulars regarding allegations made by Plaintiffs. Plaintiffs still have not produced the outstanding document and written discovery. Specifically, Plaintiffs still have not produced their financial records from the relevant time period (2018 – 2020): business bank statements, invoices, bills, transaction histories, and receipts, as well as each

Plaintiff's tax records showing their revenue and income that would be necessary to show performance, breach and Plaintiffs' alleged damages. The Court specifically directed Plaintiffs to produce the Plaintiffs' bank statements from the relevant time period on two occasions in 2025. They still have not been produced.

Moreover, Defendants still have not received a privilege log from Plaintiffs or a basic Jackson affidavit laying out what emails were spoliated, when they were spoliated, why they were not preserved, how they searched for the materials, or anything about the spoliated communications. Plaintiffs still have not produced various communications or provided any information or explanation about their recent admission that they spoliated an unspecified "number of emails for which the electronic files had been corrupted." Large swathes of communications between the various Plaintiffs and between Plaintiffs and non-parties have never been produced. Plaintiffs' allegations heavily depend upon communications that they allege exist, but Defendants deny occurred altogether. See Complaint, ¶¶36-37 (NYSCEF Doc. #2). If Plaintiffs spoliated essential documents to this case during the course of litigation, Defendants' ability to review and respond to such allegations beyond denying such communications exist is prejudiced.

Plaintiffs have not made any meaningful production in response to Defendants' twelfth through thirty-fourth document demands, which sought copies of the documents relevant to specific allegations in the Complaint. Plaintiffs did not produce a Supplemental Verified Bill of Particulars regarding allegations made by Plaintiffs.

Plaintiffs have had two years to comply with their disclosure obligations. Some of the most elementary items of discovery sought are overdue by well over two years. Two

previous motions to strike have been denied by the Court, in an effort to have this matter determined on the merits. The Court granted leave to make this third motion to strike due to the flagrant and continuous failure to provide the requested materials, despite Plaintiffs having been given extensions and multiple grace periods. Plaintiffs have declined to avail themselves of the Court's generosity and have willfully obstructed the discovery process. The requested discovery is essential to Defendants' ability to respond to Plaintiffs' claims. Without the oft requested discovery, this matter has stalled and cannot proceed to summary judgment motion and/or trial. Plaintiffs' failure to produce discovery is prolonging this action and preventing this litigation from progressing to an ultimate disposition. This willful dilatory and obstructive behavior has been tolerated in the hopes of having this matter determined on the merits but cannot be countenanced any longer.

In opposition and in the cross motion, Plaintiffs seek to compel discovery and appoint a referee. Much of the arguments raised by Plaintiff were considered and dispensed with years ago by the Court (Odorisi, J.). The Court's review of the extensive record relative to discovery in this matter does not reveal outstanding relevant discovery, apart from communications protected by the attorney-client privilege and financial records and corporate formation documents for Park and Argus that lack relevance to the claims before the Court. Indeed, some objections to these requests and others have never been challenged. There is no merit to Plaintiffs' cross motion.

Accordingly, after a review of the extensive discovery history of this matter, Defendants' motion to strike is **GRANTED**, and Plaintiffs' cross motion is **DENIED** in its entirety.

Defendants shall submit a proposed order to opposing counsel for approval, and thereafter to the Court, by October 28, 2025. With the proposed order, Defendants are directed to file an affirmation of services rendered with itemized time entries for the work performed on this motion.

Signed at Rochester, New York on September 18, 2025

HONORABLE DANIEL J. DOYLE
Supreme Court Justice