

Ajax v Sardar

2025 NY Slip Op 34415(U)

January 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 534816/22

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8th day of January 2024. 2025 SA

P R E S E N T:

HON. GENINE D EDWARDS,
J.S.C.

Index No.: 534816/22 ✓

✓ AJAX,

x

Plaintiff,

DECISION AND ORDER

-against-

✓ GINA SARDAR et al,

Defendant,

x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Motion (MS 3)	<u>1</u>
Opp/Cross (MS 4)	<u>2</u>
Opp to Cross/Reply	<u>3</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Defendant moves to reargue Plaintiff's motions for a receiver (MS 1) and for summary judgment and an order of reference (MS 2). Plaintiff opposes and cross-moves for the award of attorney's fees, alleging that Defendant's motion is frivolous. On the morning of the return date, Defendant filed opposition to the cross-motion.

To brief the relevant facts¹: Defendant answered the complaint by counsel, Eli Fixler, Esq., on March 20, 2023. On the same date, counsel for the parties appeared in Part FSMP and a briefing schedule was set for Plaintiff's motion for the appointment of a referee. Defendant

¹ To the extent that this Court lacks personal knowledge of what occurred at prior appearances, it relies on the decision and order dated June 25, 2024, which was issued by the then-assigned judge.

failed to file opposition prior to the adjourn date, instead filing bankruptcy that morning, by counsel Morris Fateha, Esq. Plaintiff's motions were held in abeyance until the bankruptcy proceedings terminated in February 2024.

On March 18, 2024, counsel² for both parties appeared, and another briefing schedule was set as to both pending motions. Defendant's opposition was to be filed no later than April 8, 2024. Again, Defendant failed to timely file opposition. Instead, opposition to the motion for summary judgment and opposition to the motion for a receiver were filed by Fateha at 7:55 AM and 8:07 AM, respectively, on the adjourn date. At the appearance, Plaintiff's counsel noted that the opposition was woefully untimely and that his office would be imminently filing a notice of rejection. Noting that "[i]n light of the protracted pendency of the motions, the multiple opportunities afforded Defendant to file opposition, and the extreme untimeliness of the eventual filing," the Honorable Larry D Martin sustained the rejection, explicitly declined to consider the opposition, and granted Plaintiff's motions by orders dated June 25, 2024.

Fateha now asserts that he was only retained to handle this matter on May 1, 2024 and, thus, he could not have filed opposition any earlier.³ Noting that Fateha e-filed documents on behalf of Defendant on May 15, 2023, that he appeared on March 18, 2024⁴ and was given the final briefing schedule, and that no excuse was proffered for Fixler's failure to file opposition prior to Fateha's involvement, Plaintiff argues that "[t]he Court should impose sanctions against Defendant's counsel for filing this frivolous motion and making misrepresentations and outright false statements to the Court" (Monahan Aff. ¶56). In his affirmation in opposition to Plaintiff's cross-motion – filed at 1:14 AM the morning of the appearance and, thus, untimely⁵ – Fateha states that he was representing Defendant solely in the bankruptcy until May 1, 2024. Inconsistently, however, Fateha proffers text messages with his per diem asking him to appear on

² It appears undisputed that it was either Fateha or his per diem – rather than Fixler – who appeared.

³ The Court notes that no CTCA from Fixler to Fateha was ever filed. Nor did Fateha proffer a retainer agreement or other documentary evidence demonstrating when he was engaged for this matter. As such, it is unclear when Defendant elected to change counsel.

⁴ It is unclear from the record whether Fateha appeared personally or through a per diem. Plaintiff's appearance report reflects his presence, but he claims to have sent his per diem. The proffered text messages are unclear – Fateha requests that the appearance be made on his behalf but also states that he will be "under 10 minutes," suggesting that the per diem was a place holder until he arrived.

⁵ Indeed, Plaintiff's counsel pointed this out, noting the irony that Fateha claims that the only reason for his prior late filing was that he was newly retained but again filed this opposition on the morning of the appearance.

this matter on March 18th – seemingly, admitting that the final adjournment and briefing schedule were secured at his request a month-and-a-half before he filed opposition. The Court also notes that no response was proffered to Plaintiff’s argument that Fixler’s failure to file opposition remains unexplained.

Upon the record, Defendant’s motion is denied. It is clear from Judge Martin’s decision and order that Plaintiff’s motions were granted on default, rendering reargument unavailable. Vacatur is also unwarranted. It is undisputed that the briefing schedule was propounded at Fateha’s request on March 18, 2023. No reasonable basis for his failure (and that of Fixler) to timely file opposition to Plaintiff’s motions has been advanced. Though the Court agrees with Plaintiff that Fateha’s assertions and, by extension, Defendant’s motion are disingenuous and bordering on frivolous, the Court does not find the motion to be sufficiently egregious to support the award of fees.

The motion and cross-motion are denied.

This constitutes the decision and order of the Court.

ENTER:



Hon. Genine D Edwards JSC