

Global Merchant Cash Inc. v OCGP Holdings, LLC

2025 NY Slip Op 34456(U)

November 19, 2025

Supreme Court, Kings County

Docket Number: Index No. 533424/2024

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 19th day of November 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
GLOBAL MERCHANT CASH INC. D/B/A
WALL STREET FUNDING,

Index No. 533424/2024

Plaintiff,

Cal. No. 11 MS 2

-against-

Decision and Order

OCGP HOLDINGS, LLC D/B/A OC CONSTRUCTION
MANAGEMENT and NINNIS HOLDINGS LLC and
OCGP LLC and JONATHAN A. NINNIS,

Defendants.

-----X
The following e-filed papers read herein:
MS 2

NYSCEF Doc Nos.
50-54, 56-58

Plaintiff Global Merchant Cash Inc. d/b/a Wall Street Funding (“Plaintiff”) has interposed a motion (motion sequence 2) pursuant to CPLR 3126 for an order striking the answer of defendants OCGP Holdings, LLC d/b/a OC Construction Management, Ninnis Holdings LLC, OCGP LLC and Jonathan A. Ninnis (collectively, “Defendants”) or for preclusion unless Defendants comply with their discovery obligations by a date to be set by the court (*see* NYSCEF Doc No. 50, notice of motion, p. 1).

Plaintiff, an entity engaged in the receivable financing business, alleges that it entered into a Receivables Purchase Agreement (the “Agreement”) with Defendants, pursuant to which Plaintiff purchased \$1,340,000.00 of Defendants’ future receivables (*see* NYSCEF Doc No. 1,

complaint, ¶ 4). Plaintiff contends that pursuant to the Agreement, it was authorized to collect via an ACH electronic debit the sum of \$30,454.55 weekly, until such time as Plaintiff collected the total amount of purchased receivables. Plaintiff avers that on July 16, 2024, it paid Defendants \$1,000,000.00 (minus applicable fees per the Agreement) as the agreed-upon purchase price for the future receivables (*id.* ¶ 8). Plaintiff contends that Defendants materially breached the Agreement by blocking Plaintiff's ACH electronic debit of the weekly \$30,454.55 sum on December 9, 2024, purportedly entitling Plaintiff to recover \$1,004,999.95 in damages from Defendants (*id.* ¶ 11).

On March 18, 2025, Plaintiff served and e-filed its Combined Discovery Demands, consisting of a Notice of Discovery and Inspection, Interrogatories, a Notice to Admit and a Notice of Deposition (*see* NYSCEF Doc No. 43). Plaintiff contends that, at this juncture Defendants have not responded to the discovery demands in question notwithstanding Plaintiff's good faith efforts to obtain compliance on the part of Defendants (*see* NYSCEF Doc No. 51, Sussman aff, ¶ 7). Accordingly, Plaintiff requests that, to prevent further delay, the court issue a conditional self-executing order pursuant to CPLR 3126 providing that unless, by a date to be set by the court, Defendants serve responses to Plaintiff's Combined Discovery Demands, Defendants' answer shall be stricken (*id.* ¶ 19).

Defendants oppose the motion on the basis that their former counsel was inexperienced in the litigation context, as a result of which said former counsel failed to respond to Plaintiff's Combined Discovery Demands (*see* NYSCEF Doc No. 56, Drezin aff, ¶ 9). Defendants argue that they recently retained experienced counsel (namely, Michael Drezin, Esq.), and, as such, intend to litigate this action on the merits (*id.* ¶¶ 8-11).

Plaintiff's motion is largely predicated on its representation that "Defendants have failed entirely to respond to Plaintiff's discovery demands, notwithstanding clear deadlines fixed by this Court's Preliminary Conference Order dated July 22, 2025" (*see* NYSCEF Doc No. 51, Sussman aff, ¶ 2). An analysis of the NYSCEF database reveals that Plaintiff's representation is at odds with the record. While a document titled "Preliminary Conference Order" dated August 22, 2025 was indeed filed on NYSCEF (*see* NYSCEF Doc No. 53), an examination of such purported "Order" reveals that it was never signed by the Court. Accordingly, Defendants' representation to the court in their motion that "Defendants have failed entirely to respond to Plaintiff's discovery demands, notwithstanding clear deadlines fixed by this Court's Preliminary Conference Order dated July 22, 2025" (*see* NYSCEF Doc No. 51, Sussman aff, ¶ 2) is unfounded.

While Plaintiff's motion is largely premised on Defendants' putative violation of a non-existent Preliminary Conference Order, the court cannot gloss over Defendants' failure to respond to Plaintiff's Combined Discovery Demands, which were served on March 18, 2025. As such, while Defendants have not violated a court order at this juncture, the court nonetheless directs Defendants to serve a response to Plaintiff's Combined Discovery Demands by no later than December 19, 2025, and should Defendants fail to adhere with the subject deadline, their answer shall be stricken.

Indeed, the violation of a court order is not a condition precedent to the grant of discovery-related relief under CPLR 3126, which expressly provides that "[i]f any party, or a person . . . refuses to obey an order for disclosure or wilfully 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." The Court of Appeals has underscored as follows the

necessity for parties to abide by their discovery duties, lest the integrity of the court system be eroded:

As this Court has repeatedly emphasized, our court system is dependent on all parties engaged in litigation abiding by the rules of proper practice (*see e.g. Brill v City of New York*, 2 NY3d 648 [2004]; *Kihl v Pfeffer*, 94 NY2d 118 [1999]). The failure to comply with deadlines not only impairs the efficient functioning of the courts and the adjudication of claims, but it places jurists unnecessarily in the position of having to order enforcement remedies to respond to the delinquent conduct of members of the bar, often to the detriment of the litigants they represent. Chronic noncompliance with deadlines breeds disrespect for the dictates of the Civil Practice Law and Rules and a culture in which cases can linger for years without resolution. Furthermore, those lawyers who engage their best efforts to comply with practice rules are also effectively penalized because they must somehow explain to their clients why they cannot secure timely responses from recalcitrant adversaries, which leads to the erosion of their attorney-client relationships as well. For these reasons, it is important to adhere to the position we declared a decade ago that “[i]f the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity” (*Kihl*, 94 NY2d at 123).

(*Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 81 [2010]).

Based on the foregoing, Defendants are hereby directed to serve a response to Plaintiff’s Combined Discovery Demands by no later than December 19, 2025, absent which Defendants’ answer shall be stricken. Any relief not expressly addressed herein has been considered and is denied.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.