

Traube v City of New York

2025 NY Slip Op 34801(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 150440/2024

Judge: Ariel D. Chesler

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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. ARIEL D. CHESLER PART 62M

Justice

-----X

INDEX NO. 150440/2024

ASHLEY TRAUBE,

MOTION DATE 04/25/2025

Plaintiff,

MOTION SEQ. NO. 002

- v -

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF PARKS AND RECREATION, NEW
YORK CITY DEPARTMENT OF TRANSPORTATION, NEW
YORK ROAD RUNNERS, INC., NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

DECISION + ORDER ON
MOTION

Defendant.

-----X

NEW YORK ROAD RUNNERS, INC.

Third-Party
Index No. 595382/2024

Plaintiff,

-against-

ALEXANDER SUSLENSKY

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40,
41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for DISCOVERY

Upon the foregoing documents, it is

In this motion, defendant/third party plaintiff New York Road Runners, Inc
("NYRR"), seek to preclude the plaintiff from offering such evidence at the time of trial pursuant
to CPLR 3042 or in the alternative compel plaintiff to provide the demanded discovery by a
certain date pursuant to CPLR 3124. Plaintiff opposes the motion.

Background

This action arises from alleged personal injuries sustained on October 26, 2022, due to a motor vehicle accident where plaintiff was struck by a cyclist and knocked to the ground. Plaintiff filed a Summons and Complaint on or about January 17, 2024. On or about April 4, 2024, defendant/third party plaintiff NYRR served its Verified Answer and on or about April 11, 2024 defendant/third party plaintiff NYRR filed its Notice of Interpleader with a Third Party Summons and Complaint. The third party action was then discontinued on consent on or about November 18, 2024. On or about April 12, 2024 a request for a Preliminary Conference (“PC”) was filed.

Discussion

NYRR asserts that plaintiff should be precluded from offering any evidence at trial or compelled to produce all outstanding discovery by a date certain under penalty of preclusion. NYRR sent follow up emails and letters to plaintiff’s counsel in attempts to receive discovery and received no response. NYRR argues that plaintiff’s lack of response constitutes a willful and contumacious failure to comply with discovery and will severely prejudice NYRR. While NYRR states in their moving and reply papers that they are only seeking to preclude plaintiff from offering evidence at trial, it is of note that the provided caselaw all relate to the penalty of striking a pleading and/or dismissing a complaint.

In opposition, as an initial matter, plaintiff claims the motion is premature as a PC has not yet taken place with the Differentiated Case Management (“DCM”) Part, and the DCM part has not generated a Case Scheduling Order (“CSO”). In addition, plaintiff argues that they have complied with all the referenced demands and provided all requested discovery on May 16, 2025.

In *J.K. et al v. Gerald Carter et al*, the Court denied a motion to compel depositions ruling that where the parties have yet to enter into a CSO, the Court concludes that it is premature to set dates certain for depositions (*J.K et al. v. Gerald Carer et al.*, Index No. 153791/2022 [Sup Ct, NY County 2023]). Pursuant to CPLR 3042(c) and 3042(d), if a party served with a demand for a bill of particulars and willfully fails to produce particulars a Court may order relief set forth in CPRL 3126. Pursuant to CPLR 3126, a Court may strike a party's pleading if that party refuses to obey an order for disclosure or willfully fails to disclose information that should have been disclosed. The First Department has held that striking a party's pleadings is a drastic sanction and must be accompanied with a clear showing that a party's failure to comply with discovery orders was willful, contumacious or in bad faith (*see Scher v. Paramount Pictures Corp*, 102 AD2d 471 [1st Dept 2001]).

Here, it cannot be contested that a PC still has not been entered and there is no CSO in place. Court Administrators have directed that for suits filed against the City, parties are to use the DCM part and this specific process to handle the massive caseload. Additionally, NYRR fails to prove that plaintiff acted in a willful or contumacious manner in failing to provide responses.

It is anticipated that a preliminary conference will be held in this matter pursuant to the administrative order of priority. While NYRR's frustration with plaintiff's failure to provide specific responses to Combined Demands is understandable, the process cannot be avoided or sidestepped. Notably the plaintiff does not have any control over the DCM Part or when PCs are scheduled. The plaintiff has not acted willfully given that no preliminary conference has been entered and this motion whether seeking preclusion or to strike pleadings denied as premature.

Accordingly, it is hereby

ORDERED, that defendant/third party plaintiff NYRR's motion is denied in its entirety.

HON. ARIEL D. CHESLER
J.S.C.

ARIEL D. CHESLER, J.S.C.

12/11/2025

DATE

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