

Bradford St., LP v Montrose
2025 NY Slip Op 35457(U)
March 14, 2025
Supreme Court, Albany County
Docket Number: Index No. 906681-23
Judge: Kimberly A. O'Connor
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

BRADFORD STREET, LP, and CAESAR
MONTROSE,

Plaintiffs,

- against -

DECISION AND ORDER

Index No.: 906681-23

STEVE A. MONTROSE, and CAROLYN B.
GEORGE,

Defendants.

(Supreme Court, Albany County, All Purpose Term)

(Justice Kimberly A. O'Connor, Presiding)

APPEARANCES: MADU, EDOZIE & MADU, P.C.
Attorneys for Plaintiffs
(Uche Emelumadu, Esq. of Counsel)
1599 East Gunhill Road
Bronx, New York 10469

CABANISS CASEY LLP
Attorneys for Defendant Steve A. Montrose
(David B. Cabaniss, Esq. of Counsel)
4 Tower Place, Suite 100
Albany, New York 12203

COSTELLO, COONEY & FEARON, PLLC
Attorneys for Defendant Carolyn B. George
(Paul G. Ferrara, Esq. of Counsel)
211 West Jefferson Street, Suite 1
Syracuse, New York 13202

O'CONNOR, J:

Defendants Steve A. Montrose ("S. Montrose") and Carolyn B. George ("George") (collectively "defendants") separately move pursuant to CPLR 3126, seeking to preclude plaintiffs from submitting evidence, documents, information and testimony sought by defendants'

individually requested discovery demands. Defendants argue that plaintiffs willfully failed, refused or neglected to comply with previous orders of this Court, and further argue that defendants have been prejudiced as a result. Plaintiffs Caesar Montrose (“C. Montrose”) and his business entity, Bradford Street, LP (“Bradford Street”) (collectively “plaintiffs”), individually cross-move against defendants pursuant to CPLR 2001, 2004, and 2005, seeking vacatur of plaintiffs’ default, an extension of time to serve responses to defendants’ discovery demands, and a finding, *nunc pro tunc*, that plaintiffs’ discovery responses were served in a timely manner.

Discussion

I. Procedural History

Defendants’ submissions establish the following litigation history: On September 23, 2023, George separately served both plaintiffs with Interrogatories, Notices to Produce, and Omnibus Discovery Demands. The documents included a cover letter which summarized the content of the enclosures. On October 24, 2023, George’s legal counsel wrote to plaintiffs’ counsel requesting responses to discovery, and indicated that an extension could be provided if needed. George’s counsel inquired about the status of the discovery demands several more times, writing to plaintiffs’ counsel on November 28, 2023, January 25, 2024, and May 10, 2024. A preliminary conference was held by this Court on May 13, 2024, at which time a discovery schedule was set. Within the Court’s Preliminary Conference Order (O’Connor, J.), the Court directed the parties to complete all paper discovery and responses to combined discovery demands by July 31, 2024. On May 31, 2024, S. Montrose’s counsel filed and served upon plaintiffs’ attorney a demand for a Verified Bill of Particulars and Combined Demands for Discovery.

George’s counsel wrote to plaintiffs’ counsel on June 18, 2024, informing plaintiffs that they still have not received responses to George’s Interrogatories, Notices to Produce, and

discovery demands. George's counsel stated that if plaintiffs did not adequately respond within thirty (30) days, judicial intervention would be sought out. On August 15, 2024, S. Montrose's counsel wrote to plaintiffs' counsel, stating that plaintiffs failed to respond to the outstanding Demand for a Verified Bill of Particulars and Combined Discovery Demands by July 31, 2024, as was directed by the Court. S. Montrose's counsel warned plaintiffs' counsel that if responses were not provided within fourteen (14) days from the date of the letter, counsel would seek judicial intervention. Shortly thereafter, on August 16, 2024, George's counsel wrote to plaintiffs informing them that they failed to respond to the outstanding discovery demands within the timeframe provided by the Court. Within the correspondence, George's counsel informed plaintiffs' counsel that if no responses were received within twenty (20) days of the letter, defendants would seek judicial intervention.

George's counsel wrote to the Court on September 5, 2024, requesting a conference to discuss the outstanding discovery issues. The Court conferenced this matter on September 17, 2024, and issued an Amended Preliminary Conference Order (O'Connor, J.) on September 18, 2024, which directed the parties to complete all paper discovery, including responses to combined discovery demands, by October 18, 2024. The Order instructed the parties to comply with 22 NYCRR § 202.07 to resolve any discovery issues or dispute that arise, and further instructed the parties that if an issue related to discovery could not be resolved, to "immediately telephone chambers and schedule a conference on a date that is convenient to all counsel for the purpose of resolving the issue(s) or dispute(s) before the filing of any discovery motion" (NYSCEF Doc. No. 63). The parties do not dispute that plaintiffs failed to produce discovery demands by October 18, 2024. Although plaintiffs dated its discovery responses as October 18, 2024, defendants were not provided with responses to the outstanding discovery responses until October 31, 2024.

II. Defendant George's Contentions

Defendants both argue that plaintiffs failed to provide discovery responses in a timely manner, in violation of two of the Court's Scheduling Orders. George stated that plaintiffs' responses to George's Interrogatories impermissibly raise objections which have been waived by plaintiffs' prolonged delay in responding, and are inadequate, incomplete and/or non-responsive. Looking to the responses provided, George argues that Bradford Street's response to George's Notice to Produce referenced documents which were not provided in connection with the response. George emphasizes that while a response was provided by plaintiff Bradford Street, plaintiffs were separately served with Notices to Produce, and no response has been provided to George from C. Montrose. George further states that plaintiffs provided no response to her Omnibus Discovery Demands. George stresses that "the documents, evidence, items, and materials requested in the Notices to Produce and Discovery Demands are also necessary for the defense of [p]laintiffs' causes of action against Ms. George and their alleged damages[,] and specifies that plaintiffs' failure to response to the aforementioned discovery demands deprived her "of information and materials necessary to provide several of her Affirmative Defenses" (NYSCEF Doc. No. 65). George maintains that without proper responses to her discovery demands, she "cannot adequately or reasonably prepare for depositions or otherwise proceed to trial" (NYSCEF Doc. No. 65).

III. Defendant S. Montrose's Contentions

S. Montrose argues that plaintiffs only provided a response to the outstanding Demand for a Verified Bill of Particulars, and did not provide a response to S. Montrose's Combined Demands for Discovery. S. Montrose stresses that the discovery demands "seek production of statements, identification of witnesses, and production of photographs and video recordings" which are critical for S. Montrose's defense to plaintiffs' claims and in support of S. Montrose's counterclaims. S.

Montrose confirms that he received a zip file identified as “Montrose – Documents Package 10.31.24” but argues that the 678-page record fails to correspond to the 41 paragraphs of requested items identified within S. Montrose’s Discovery Demands, forcing him “to guess as to what documents [p]laintiffs have, which documents they do not have, and which documents, if any, correspond to” the paragraphs of requested items (NYSCEF Doc. No. 99). S. Montrose argues that this will cause him to be disadvantaged going into depositions and preparing for trial.

IV. Plaintiffs’ Opposition & Cross-Motions

Plaintiffs concede that they were not able to respond to defendants’ demands by July 31, 2024, in compliance with the Court’s initial Preliminary Conference Order. Moreover, plaintiffs do not dispute that they failed to comply with the Court’s Amended Preliminary Conference Order, and agree with defendants that their responses were not provided until October 31, 2024. Plaintiffs request that the Court vacate their default in responding to defendants’ discovery demands, extend plaintiffs’ time to respond to the discovery demands, and deem plaintiffs’ October 31, 2024, responses as timely, *nunc pro tunc*, pursuant to CPLR 2001, 2004, and 2005, because plaintiffs’ failure to timely respond was not willful or contumacious. In support of vacatur, plaintiffs included an affidavit from C. Montrose, who stated that while he intended to respond in a timely manner to the outstanding discovery demands, in late-summer of 2024, his six-year-old daughter who resides in the Dominican Republic was injured in an accident which required the amputation of one of her fingers. C. Montrose annexed a photograph of his daughter’s injury in support of this statement. C. Montrose explained that he had to “rush down to the Dominican Republic to attend to [his] daughter’s injury” which prevented him from producing the information and documents required to respond to discovery. C. Montrose stated that he returned from the Dominican Republic on September 16, 2024. In support of this statement, C. Montrose included a copy of his passport,

which included a return stamp with this date. C. Montrose stated that a few days after his return, a complication arose with his daughter's surgery which forced him to return to the Dominican Republic on September 21, 2024. The passport confirmed that C. Montrose went to the Dominican Republic on this date, but does not indicate if/when C. Montrose has returned.

Looking first to George's discovery demands, plaintiffs' counsel stated that he became aware after reviewing the office files, scans, and emails, that although it was his intention to do so, C. Montrose's response to George's Notice of Produce was "erroneously not served on defendant" (NYSCEF Doc. No. 111). Plaintiffs' counsel stated that prior to the Court's conference on September 17, 2024, counsel reminded C. Montrose of his duty to locate and produce documents responsive to defendants' discovery demands, and was unaware that C. Montrose had to travel out of the country. Plaintiffs' counsel argues that as a result of C. Montrose's absence he was not able to obtain the required documents to timely respond to defendants' discovery demands. Plaintiff's counsel concedes that he "failed to seek an extension of time from the [C]ourt to respond to defendants' discovery demands" (NYSCEF Doc. No. 111). Plaintiffs object to defendants' claim that no documents were attached to plaintiffs' responses, and maintain that defendants were served via email and regular mail with over 670 "bates stamped documents" on October 31, 2024 (NYSCEF Doc. No. 111). Plaintiffs maintain that although their responses were late, they complied with George's discovery demands. Plaintiffs argue that they did not respond to George's Omnibus Discovery Demands because they did not have it in their files and were only aware of it because of George's present motion to preclude. Plaintiffs indicate that they will respond to this demand. Plaintiffs argue that George was not prejudiced by this delay and would not suffer prejudice if the Court were to extend plaintiffs' time to respond to discovery.

Turning to S. Montrose's discovery demands, plaintiffs maintain that they served S. Montrose with a Verified Bill of Particulars on October 31, 2024, by both email and regular mail. Plaintiffs' counsel concedes that he inadvertently served S. Montrose with responses to George's discovery demands instead of serving S. Montrose with responses to his Combined Discovery Demands. Plaintiffs attached a response to S. Montrose's Combined Discovery Demands in support of its cross-motion. Plaintiffs argue that S. Montrose was not prejudiced by plaintiffs' delay and would not suffer prejudice if the Court were to extend plaintiffs' time to respond to discovery.

V. Defendants' Opposition to Plaintiffs' Cross-Motions

George argues that due to the absence of any response to the six letters her counsel wrote to plaintiffs' counsel addressing George's outstanding discovery demands, plaintiffs' admitted violation of two Court Preliminary Conference Orders, plaintiffs' failure to request additional time or express difficulty in complying with the Court's directives, and plaintiffs' continued failure to respond to George's Omnibus Discovery Demands, her motion to preclude should be granted and plaintiffs' cross-motion to vacate their default should be denied. George argues that in opposition, plaintiffs do not dispute that their objections to her Interrogatories have been waived due to their thirteen (13) month delay in responding, and do not dispute that their responses are inadequate, incomplete and/or non-responsive. George notes that despite being served with a motion to preclude on November 4, 2024, plaintiffs "failed, refused or neglected to make any effort to supplement or amend their inadequate, incomplete and/or non-responsive Interrogatory responses" (NYSCEF Doc. Nos. 135, 136).

George then states that several of plaintiff's responses to multiple document requests in the Notices to Produce state: "[D]ocuments are being located" or "[F]urther documents are being

located and will be forwarded to you upon receipt" (NYSCEF Doc. Nos. 135, 136, citing NYSCEF Doc. Nos. 85, 119). George further argues that plaintiffs then impermissibly responded to requests for particular documents by referring to their entire document production, and failed to provide a certificate of compliance, as is required by 22 NYCRR § 202.20-c(c). George notes that despite plaintiffs' representation that they never received her Omnibus Discovery Demands, within the four letters provided by her counsel to plaintiffs' counsel, it was specifically noted that responses to the Omnibus Discovery Demands were outstanding. George stresses that due to plaintiffs' continued failure to respond to her discovery demands, she has incurred substantial legal fees and "is unable to adequately or reasonably prepare for depositions or otherwise proceed to trial" (NYSCEF Doc. Nos. 135, 136). George notes that "[i]t is likely that memories and recollections about events which occurred as far back as 2006 have faded and relevant documents are no longer available" (NYSCEF Doc. Nos. 135, 136).

In opposition to plaintiffs' cross-motion, S. Montrose argues that plaintiffs concede that they failed to serve a response to his Combined Demands for Discovery. S. Montrose emphasizes that although plaintiffs' counsel stated that there was "a mix-up when they served documents on October 31, 2024," plaintiffs' corrected response was not provided to S. Montrose until December 13, 2024 (NYSCEF Doc. Nos. 137, 138). S. Montrose contends that even if the Court were to accept later service of this response, the responses are "inadequate, incomplete, and deficient" because they raise objections that are untimely asserted, and "responded to request for documents by stating: 'Further documents, when located, will be forwarded to you upon receipt' or 'further documents are being located and will be forwarded to you upon receipt' " (NYSCEF Doc. Nos. 137, 138, quoting NYSCEF Doc. 132). S. Montrose specifies that Request No. 17 sought evidence of "all the payments of mortgages and other loans" and Request No. 6 "sought production of

communications between Caesar Montrose and Carolyn George” (NYSCEF Doc. Nos. 137, 138). S. Montrose argues that plaintiffs’ responses imply that there are other documents to be produced, yet fail to provide “a reason as to why they have not been located or where they might be” (NYSCEF Doc. Nos. 137, 138). S. Montrose further argues that plaintiffs’ responses are “confusing and contradictory” and find that plaintiffs’ claim that they are “unable to locate” banking records and credit statements “highly suspect” because the records can be obtained from the bank and credit card companies. S. Montrose restates that plaintiffs’ responses broadly refer to an entire collection of documents instead of pinpointing the documents which are responsive to each request.

VI. Plaintiffs’ Reply to Defendants’ Opposition Papers

In reply, plaintiffs included a response to George’s Omnibus Discovery Demands and restated that they did not see a copy of the demands in their discovery file. Plaintiffs note that the documents and information requested within the thirteen (13) Omnibus Discovery Demands were simple requests that plaintiffs had mostly produced in response to George’s other discovery demands, and would have responded to if they had been aware of them. Plaintiffs argue that for the first time in her opposition papers George alleges that plaintiff’s responses are inadequate. Plaintiffs state that they are prepared to supplement and or amend any responses that are determined to be inadequate. Plaintiffs emphasize that George has not suffered any prejudice from plaintiffs’ responses being served twelve (12) days beyond the due date. Plaintiffs explain that the response “further documents are being located and will be produced upon receipt” was included “to assure defendant that any documents located after the responses to the demands were served will be produced by plaintiff” (NYSCEF Doc. Nos. 139-144). Plaintiffs explained that they

provided all documents located in response to the Notice to Produce because George sought the production of “all documents” (NYSCEF Doc. Nos. 139-144).

Turning to S. Montrose’s opposition, plaintiffs argue that they have responded to all of S. Montrose’s discovery demands. Plaintiffs maintain that they produced all documents responsive to S. Montrose’s demands. Plaintiffs’ counsel explained that because some documents requested were from 2007, he felt it was important to note and “assure defendants that he would continue to look for documents and would produce any documents located after responding to discovery” (NYSCEF Doc. No. 145), but would delete the response if necessary to confirm that no documents were being withheld. Plaintiffs state that while S. Montrose objected to plaintiffs’ response to Request No. 17 of S. Montrose’s Combined Demands for Discovery, plaintiffs explained that “because of the age of the documents which he has not located, if further documents are located, he would produce them” (NYSCEF Doc. No. 145). Plaintiff further argue that Request No. 6 which sought “[a]ll communications between Ceasar Montrose and Steve Montrose regarding the subject property” was an incredibly voluminous request that would be impossible for plaintiffs to respond to, because those communications existed from 2006 to the present, and are not limited to the type of communication exchanged. With respect to Requests Nos. 5, 6, 7, 10, and 11, plaintiffs argued that they produced any documents within their possession and explained that “because of age, that some documents are lost or destroyed” (NYSCEF Doc. No. 145).

Plaintiffs concede that their response to Request No. 19 of S. Montrose’s Combined Discovery Demand was entered in error, because although C. Montrose stated that he was unable to produce all banking records responsive to the request, C. Montrose subsequently requested bank statements from his bank and produced the bank records for the following periods of time: 2021; 2019; May-December 2020; May-December 2018; and October-December 2017. Plaintiffs state

that as soon as the remaining bank statements are received, they will be immediately forwarded to S. Montrose's counsel. Plaintiffs express that they intend to amend their response, and emphasize that they will supplement and/or amend any responses "shown to be inadequate" (NYSCEF Doc. No. 145).

VII. Applicable Law

"CPLR 3126 . . . governs discovery penalties and applies where a party refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed" (*Gibbs v. St. Barnabas Hosp.*, 16 N.Y.3d at 79; *see HSBC Bank USA, N.A. v. Giannikakis*, 216 AD3d 622, 624 [2d Dept 2023]). Notably, "[t]he statute contains a list of nonexclusive sanctions," including preclusion, and "permits courts to fashion orders 'as are just'" (*Gibbs v. St. Barnabas Hosp.*, 16 N.Y.3d at 79). Because the Courts strongly favor the resolution of actions on their merits, "the remedy of preclusion is drastic[,] and is therefore reserved for those instances where the offending party's lack of cooperation with disclosure was willful, deliberate, and contumacious" (*Tardi v. Casler-Bladek*, 216 A.D.3d 1267, 1267 [3d Dep't 2023] [internal quotation marks, ellipsis, and citations omitted]; *see Pizzo v. Lustig*, 216 A.D.3d 38, 44-45 [2d Dep't 2023]; *D.A. Bennett LLC v. Cartz*, 113 A.D.3d 945, 946 [3d Dep't 2014]). "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" (*Rosenblatt v. Franklin Hosp. Med. Ctr.*, 165 A.D.3d 862, 862 [2d Dep't 2018] [internal quotation marks and citations omitted]; *see Commisso v. Orshan*, 85 AD3d 845, 845 [2d Dept 2011], *lv dismissed & denied* 18 N.Y.3d 876 [2012]).

Trial courts have the authority to "regulate issues of timing through their preliminary and compliance conference orders . . . , subject to their authority and discretion to manage their calendars

and[,] determine whether to preclude evidence under CPLR 3126(2) for any noncompliance with court-imposed deadlines” (*Pizzo v. Lustig*, 216 A.D.3d at 48-49 [internal citations omitted]). “Whether to impose a sanction and the nature and degree of said sanction are matters first committed to the sound discretion of the trial court, and such sanctions generally remain undisturbed absent an abuse of discretion” (*M.F. by Durivage v. Albany Med. Ctr.*, 217 A.D.3d 103, 106 [3d Dep’t 2023] [citations omitted]). CPLR 3126 “broadly empowers a trial court to craft a conditional order—an order ‘that grants the motion and imposes the sanction “unless” within a specified time the resisting party submits to the disclosure’ ” (*Gibbs v. St. Barnabas Hosp.*, 16 N.Y.3d at 79, quoting Patrick Connors, Practice Commentaries, McKinney’s Cons. Laws of N.Y., Book 7B, CPLR C3126:10).

Pursuant to CPLR 2001, “[a]t any stage of an action...the court may permit a mistake, omission, defect or irregularity...to be corrected, upon such terms as may be just.” Similarly, the Court has the general authority to “extend the time fixed by...order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed” (CPLR 2004). With respect to a party’s default, pursuant to CPLR 5015(a), “[t]he court which rendered a[n]...order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of...excusable default[.]” “[T]o obtain relief from the dictates of a conditional order that will preclude a party from submitting evidence in support of a claim or defense, the defaulting party must demonstrate (1) a reasonable excuse for the failure to produce the requested items and (2) the existence of a meritorious claim or defense” (*Gibbs v. St. Barnabas Hosp.*, 16 N.Y.3d at 80). Although “[t]he court has discretion to accept law office failure as a reasonable excuse (*see* CPLR 2005) where that claim is supported by a detailed and credible

explanation of the default at issue” (*Fortino v. Wheels, Inc.*, 204 A.D.3d 756, 757 [2d Dep’t 2022]), “a conclusory, undetailed, and unsubstantiated claim of law office failure or mere neglect does not amount to a reasonable excuse” (*V. v Leo*, 219 A.D.3d 961, 961-962 [2d Dep’t 2023]).

VIII. Analysis & Conclusion

Guided by these legal principles, the Court finds that plaintiffs failed to establish a reasonable excuse for their continued failure to respond to defendants’ discovery demand. The Court also finds that plaintiffs’ continued failure to respond to defendants’ discovery demands is willful and contumacious. In making this determination, the Court not only considers plaintiffs’ conceded failure to comply with the Court’s Amended Preliminary Conference Order, which directed plaintiffs to respond to defendants’ discovery demands by October 18, 2024, but also plaintiffs’ repeated failure to respond or acknowledge George’s requests for discovery responses, plaintiffs’ prior violation of the Court’s Preliminary Conference Order which directed plaintiffs to respond to the discovery demands of both defendants by July 31, 2024, plaintiffs’ substantial delay in responding to George’s discovery demands over a thirteen-month duration, and plaintiffs’ delay in responding to S. Montrose’s discovery demands served in May 2024.

Even when plaintiffs’ responses were provided to defendants on October 31, 2024, plaintiffs failed to provide responses to George’s Omnibus Discovery Demands or S. Montrose’s Combined Discovery Demands. Plaintiffs’ counsel claims that such errors were caused by law office failure, but this purported excuse only explains plaintiffs’ further delay in responding past October 31, 2024, a response which was made by plaintiffs in violation of the Court’s October 18, 2024, discovery deadline. While C. Montrose expressed difficulty in producing documents from late summer through the end of September due to a family emergency, George’s discovery demands were served upon plaintiffs in September 2023, approximately a year before this

emergency occurred, and S. Montrose's discovery demands were made in May 2024, several months before this incident arose. Therefore, the Court does not find that this explanation excuses plaintiffs' continued failure to respond to defendants' outstanding discovery requests. The Court recognizes that plaintiffs' counsel was unaware that C. Montrose was traveling during the time when discovery was to be produced, but stresses that plaintiffs had been provided over a year to produce responses to George's discovery demands, and several months to respond to S. Montrose's discovery demands. Plaintiffs do not explain or justify this continued delay in their motion papers.

With respect to plaintiffs' objections to certain discovery demands made by defendants, CPLR 3122(a) provides that if a party "objects to the disclosure, inspection, or examination" of a notice or subpoena under CPLR 3120, the objection must be made "[w]ithin twenty days of service of [the] notice or subpoena" (CPLR 3122[a]). By failing to timely object to defendants' demands, plaintiffs waived their right to object (*see Worldview Entertainment Holdings, Inc. v. Woodrow*, 204 A.D.3d 629, 630 [1st Dep't 2022]) and cannot not use such objections as a basis for plaintiffs' failure to respond to defendants' demands. Therefore, the Court denies plaintiffs' cross-motions which seek vacatur of its failure to comply with the Court's Amended Preliminary Conference Order and a finding of timeliness, *nunc pro tunc*. Moreover, the Court finds that plaintiffs' continued failure to respond to defendants' discovery demands is willful and contumacious, and has prejudiced defendants by preventing them from adequately or reasonably preparing depositions, preparing or supporting affirmative defenses and/or counterclaims raised, and proceeding to trial (*see Sparakis v. Gozzer Corp.*, 177 A.D.3d 1011, 1012-1013 [2d Dep't 2019]).

Accordingly, the Court finds that a conditional order is warranted which grants defendants' motions and imposes the sanction of preclusion unless plaintiffs remedy their discovery response defects within twenty (20) days of this Decision and Order. S. Montrose argues that plaintiffs'

responses include a voluminous zip file that is over 600 pages long. Pursuant to CPLR 3122(c), “[w]henver a person is required pursuant to such notice or order to produce documents for inspection, that person shall produce them as they are kept in the regular course of business or shall organize and label them to correspond to the categories in the request.” In response to defendants’ discovery demands, plaintiffs must adequately identify the relevant documents so that defendants are able to identify which document is responsive to each request. Furthermore, to the extent that plaintiffs concede that they provided incomplete responses to certain requests and have not filed a certificate of compliance, as is required by 22 NYCRR § 202.20-c(c), such responses must be supplemented by the aforementioned timeframe. As the Court determined that plaintiffs’ objections to defendants’ discovery demands have been waived, plaintiffs must also supplement their discovery responses which raised objections by the aforementioned timeframe.

Any remaining arguments not specifically addressed herein have been considered and found to be lacking in merit or need not be reached in light of this determination. Accordingly, it is hereby

Accordingly, it is hereby

ORDERED, that defendant George’s motion to preclude is granted to the extent that plaintiffs are directed to serve defendant George with complete responses to defendant’s discovery demands in compliance with CPLR 3122(c), and a certificate of compliance, as is required by 22 NYCRR § 202.20-c(c), within twenty (20) days of service of a copy of this Decision and Order upon defendant with notice of entry; and it is further

ORDERED, that if plaintiffs fail to serve the same upon defendant George within such twenty-day period, plaintiffs are precluded from submitting evidence, documents, information and testimony sought in defendant George’s discovery demands; and it is further

ORDERED, that defendant S. Montrose's motion to preclude is granted to the extent that plaintiffs are directed to serve defendant S. Montrose with complete responses to defendant's discovery demands in compliance with CPLR 3122(c), and a certificate of compliance, as is required by 22 NYCRR § 202.20-c(c), within twenty (20) days of service of a copy of this Decision and Order upon defendant with notice of entry; and it is further

ORDERED, that if plaintiffs fail to serve the same upon defendant S. Montrose within such twenty-day period, plaintiffs are precluded from submitting evidence, documents, information and testimony sought in defendant S. Montrose's discovery demands.

ORDERED, that plaintiffs' cross-motions are denied; and it is further

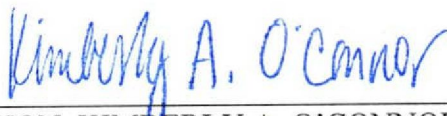
ORDERED, that the parties shall appear for a **virtual conference** scheduled for **April 3, 2025 at 1:00 p.m.**, to discuss the status of the case.

This memorandum constitutes the Decision and Order of the Court. The original Decision and Order is being uploaded to the NYSCEF system for filing and entry by the Albany County Clerk. The signing of this Decision and Order and uploading to the NYSCEF system shall not constitute filing, entry, service, or notice of entry under CPLR 2220 and § 202.5-b(h)(2) of the Uniform Rules for the New York State Trial Courts. Counsel is not relieved from the applicable provisions of those Rules with respect to filing, entry, service, and notice of entry of the original Decision and Order.

SO ORDERED.

ENTER.

Dated: March 14, 2025
Albany, New York



HON. KIMBERLY A. O'CONNOR
Acting Supreme Court Justice



03/14/2025

Papers Considered:

1. Defendant Carolyn B. George's Notice of Motion to Preclude, dated November 4, 2024, Affidavit of Paul G. Ferrara, Esq., in Support of Motion, dated November 4, 2024, with Exhibits 1-20 annexed;
2. Defendant Steve Montrose's Motion to Preclude, dated November 21, 2024; Affirmation of David B. Cabaniss, Esq., in Support of Motion, dated November 21, 2024, with Exhibits A-I annexed;
3. Plaintiffs' Notice of Cross-Motion Against Defendant Carolyn B. George, dated December 12, 2024; Affirmation of Uche Emelumadu, Esq., in Support of Motion, dated December 12, 2024, with Exhibits A-K annexed; Affidavit of Caesar Montrose, sworn to December 12, 2024;
4. Plaintiffs' Notice of Cross-Motion Against Defendant Steve Montrose, dated December 12, 2024; Affirmation of Uche Emelumadu, Esq., in Support of Motion, dated December 12, 2024, with Exhibits A-H annexed; Affidavit of Caesar Montrose, sworn to December 12, 2024;
5. Affidavit of Paul G. Ferrara, Esq., in Further Support of Defendant Carolyne B. George's Motion to Preclude and in Opposition to Plaintiffs' Cross-Motion Against Defendant Carolyn B. George, sworn to December 16, 2024;
6. Reply Affirmation of David B. Cabaniss, Esq., in Further Support of Defendant Steve Montrose's Motion to Preclude and in Opposition to Plaintiffs' Cross-Motion, dated December 18, 2024;
7. Affirmation of Uche Emelumadu, Esq., in Further Support of Plaintiffs' Cross-Motion Against Defendant Carolyne B. George, dated December 18, 2024, with annexed Exhibit A; *and*
8. Affirmation of Uche Emelumadu, Esq., in Further Support of Plaintiffs' Cross-Motion Against Steve Montrose, dated December 18, 2024.