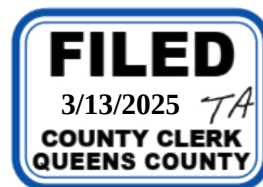


Ridgewood Tower LLC v K C & V Realty LLC
2025 NY Slip Op 35526(U)
March 12, 2025
Supreme Court, Queens County
Docket Number: Index No. 704157/2018
Judge: Leonard Livote
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SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY



Present: Honorable Leonard Livote
Supreme Court Justice

Commercial Division
Part A

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RIDGEWOOD TOWER LLC,

Index No: 704157/2018

Plaintiff,

Motion Sequence:
009

v.

K C & V Realty LLC

Motion Date:
08/06/2024

Defendant.

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The following numbered papers read on the motion by the defendant seeking, among other relief, to strike the plaintiff's complaint pursuant to CPLR 3126 based on the plaintiff's purported failure to timely and sufficiently respond to certain discovery demands.

PAPERS
NUMBERED

Notice of Motion – Affidavits – Exhibits	EF 193-203
Answering Affidavits – Exhibits	EF 204-212
Reply Affidavits	EF 213-215

Upon the foregoing papers it is ordered that the motion is determined as follows:

This action is one of several related actions that seek to settle a dispute over the ownership of a driveway that runs along a boundary between two adjoining properties, which are owned by the plaintiff Ridgewood Tower LLC (Ridgewood) and the defendant KC&V Realty, LLC (KC&V). At the heart of the claims in each action is Ridgewood's allegation that it is the fee owner of a portion of the driveway, pitted against KC&V's allegation that it acquired title to the entire driveway through adverse possession. KC&V now moves to strike the complaint, asserting that this

relief is appropriate, based on Ridgewood's repeated refusal to provide substantive responses to KC&V's discovery demands. KC&V argues that Ridgewood's conduct during the course of this litigation demonstrates that it has willfully refused to comply with KC&V's discovery demands and so-ordered discovery stipulations.

To this end, KC&V asserts that, despite its frequent requests for compliance and a court-ordered discovery schedule, Ridgewood delayed its responses to multiple discovery demands for several years. KC&V further contends that, when Ridgewood served its responses to these demands, the disclosure provided was not meaningful, as it consisted of irrelevant documents and boilerplate objections to KC&V's various requests. KC&V also notes that Ridgewood failed to offer any excuse for its failure to provide substantive responses to its discovery demands. KC&V argues that the complaint in this action should be stricken pursuant to CPLR 3126, or alternatively, that pursuant to CPLR 3124, Ridgewood should be precluded from presenting any evidence or testimony on the issue of KC&V's adverse possession of the driveway. This being the case, KC&V also contends that it is entitled to an award of costs and attorneys' fees pursuant to 22 NYCRR 130-1.1.

In opposition to the motion, Ridgewood argues that, although its responses were belated, it nevertheless acted in good faith in responding to KC&V's discovery demands. Ridgewood also asserts that its failure to timely respond was reasonable because these delays were caused by, among other things, various changes to its corporate management structure and substitution of counsel. In addition, Ridgewood contends that KC&V is not entitled to responses to those interrogatories that exceed the twenty-five-interrogatory limit set forth in 22 NYCRR 202.20.

"Pursuant to CPLR 3126, a court may impose discovery sanctions, including the striking of a pleading, 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" (255 *Butler Assoc., LLC v 255 Butler, LLC*, 208 AD3d 838, 839 [2d Dept 2022] [internal quotation marks omitted]; see *Amos v Southampton Hosp.*, 198 AD3d 947, 948 [2d Dept 2021]). "Before a court invokes the drastic remedies of striking a pleading or precluding evidence based on the failure to provide court-ordered discovery, there must be a clear showing that the failure was willful and contumacious" (*Madonna Mgt. Services, Inc. v R.S. Naghavi, M.D., PLLC*, 172 AD3d 845, 847 [2d Dept 2019]). "The willful and contumacious character of a party's conduct can be inferred from either (1) the repeated failure to respond to demands or comply with court-ordered discovery, without a reasonable excuse for these failures, or (2) the failure to comply with court-ordered discovery over an

extended period of time” (*Maliah-Dupass v Dupass*, 166 AD3d 873, 875 [2d Dept 2018]).

KC&V’s submissions demonstrate that, in January 2020, KC&V served a second set of interrogatories and a second request for documents upon Ridgewood, which sought, among other things, documents and information related to KC&V’s claim of adverse possession and Ridgewood’s defense thereto. After not receiving a response to these demands for more than two years, KC&V filed its first motion seeking, among other relief, to strike Ridgewood’s complaint pursuant to CPLR 3216 (*see* NY St Cts Elec Filing [NYSCEF] Doc No. 134). In response to this motion, Ridgewood served responses to both the second set of interrogatories and the second request for documents in November 2022. The court notes that, of the fifteen interrogatories in KC&V’s second set of interrogatories, a review of Ridgewood’s response reveals that it provided a substantive response to only two of them. Nevertheless, upon receiving Ridgewood’s responses, KC&V withdrew its motion and served third set of interrogatories and a third request for documents in December 2022. Although a February 21, 2023 conference status order required that discovery be completed before July 15, 2023, the plaintiff did not serve a response to third set of interrogatories and third request for documents until June 2024. However, Ridgewood provided a substantive response to only two of the six interrogatories set forth in KC&V’s third set of interrogatories.

Under these circumstances, the court finds that Ridgewood’s willful and contumacious conduct can be inferred from repeatedly failing to timely and substantively comply with KC&V’s interrogatories over a multi-year period (*see Taglianetti v Bay Ridge Med. Imaging, P.C.*, 229 AD3d 477, 479 [2d Dept 2024]; *Parker Waichman, LLP v Laraia*, 131 AD3d 1215, 1216 [2d Dept 2015]; *Wolf v Flowers*, 122 AD3d 728, 729 [2d Dept 2014]). Yet Ridgewood did not respond to KC&V’s second set of interrogatories until after KC&V’s motion to strike the complaint was filed. Similarly, despite KC&V’s repeated requests for compliance, Ridgewood did not respond to the third set of interrogatories until KC&V indicated at a conference that it would file another motion to strike the complaint.

In addition, Ridgewood’s responses to KC&V’s second and third sets of interrogatories, by and large, amount to no responses at all. Of the twenty-one interrogatories presented between the two sets, the plaintiff objected, without a substantive response, to all but two of them. Notably, however, these objections were untimely (*see* CPLR 3133 [a]; *Salwen Paper Co., Inc. v Merrill Lynch, Pierce, Fenner & Smith Inc.*, 110 AD2d 895, 896 [2d Dept 1985]). For this reason, Ridgewood’s present challenge to the number of interrogatories is also untimely (*see*

CPLR 3133 [a]; *Salwen Paper Co., Inc.*, 110 AD2d at 896). In any event, Ridgewood does not assert that the discovery sought by KC&V is privileged, and it failed to demonstrate that the interrogatories at issue are palpably improper (*cf. PF2 Sec. Evaluations, Inc. v Fillebeen*, 168 AD3d 617, 618 [1st Dept 2019]; *Wesche v Wesche*, 51 AD3d 909, 910 [2d Dept 2008]).

The court further finds that Ridgewood failed to offer an adequate excuse for its twenty-two-month delay in responding to KC&V's second set of interrogatories or its eighteen-month delay in responding to KC&V's third set of interrogatories. To the extent that Ridgewood asserts that the delays were caused, in part, by changes to counsel, this is attributable to Ridgewood's own conduct, as Ridgewood's counsel moved to withdraw from representing Ridgewood three times for non-payment of legal fees. Next, Ridgewood's reference to changes to the corporate structure of its internal managing entity is devoid of any details as to how this change impacted its ability to respond to KC&V's discovery demands. Moreover, Ridgewood failed to explain the eleven-month gap between KC&V's service of its third set of interrogatories and Ridgewood's purported changes to its management structure.

KC&V is therefore entitled to an order striking Ridgewood's complaint. Finally, although KC&V also seeks an award of costs and attorneys' fees in connection with making the motion, its submissions do not detail the actual expenses incurred in or the reasonable attorneys' fees associated with making the motion. Thus, KC&V is entitled to the \$45.00 fee for filing the motion (*see* CPLR 8020 [a]).

Accordingly, it is

ORDERED that the branch of KC&V's motion to strike Ridgewood's complaint pursuant to CPLR 3126 is granted, and it is further

ORDERED that Ridgewood's complaint dated March 19, 2018 (NYSCEF Doc. No. 3) is stricken.

Any other and/or further relief requested and not addressed is denied.

This constitutes the Order of the Court.

Dated: March 12, 2025


Leonard Livote, J.S.C.

