

O'Toole v Gorenstein

2026 NY Slip Op 30047(U)

January 7, 2026

Supreme Court, New York County

Docket Number: Index No. 805260/2023

Judge: Kathy J. King

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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. KATHY J. KING PART 06

Justice

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INDEX NO. 805260/2023
MOTION DATE 09/15/2025
MOTION SEQ. NO. 001 002

JOANNA O'TOOLE,

Plaintiff,

- v -

LYALL A. GORENSTEIN, ROCKLAND THORACIC AND
VASCULAR ASSOCIATES, P.C., and NEW YORK-
PRESBYTERIAN/COLUMBIA UNIVERSITY MEDICAL
CENTER,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31,
32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 61, 63,
64, 65, 66, 75, 76

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 58, 59, 60, 62, 67,
68, 69, 70, 71, 72, 73, 74

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendants LYALL A. GORENSTEIN, MD, and THE
NEW YORK and PRESBYTERIAN HOSPITAL s/h/a "NEW YORK
PRESBYTERIAN/COLUMBIA UNIVERSITY MEDICAL CENTER" move for an Order
(Motion Seq. 001):

- 1) Pursuant to CPLR 3126, dismissing the action with prejudice as to
Defendants LYALL A. GORENSTEIN, MD, and THE NEW YORK and
PRESBYTERIAN HOSPITAL s/h/a "NEW YORK
PRESBYTERIAN/COLUMBIA UNIVERSITY MEDICAL CENTER on
the grounds that Plaintiff has willfully failed to provide discovery that ought
to have been disclosed; and
2) Pursuant to CPLR 3042 and CPLR 3126, dismissing the action with
prejudice as to Defendants LYALL A. GORENSTEIN, MD, and THE
NEW YORK and PRESBYTERIAN HOSPITAL s/h/a "NEW YORK
PRESBYTERIAN/COLUMBIA UNIVERSITY MEDICAL CENTER on

- the grounds that Plaintiff has willfully failed to respond to Defendants' demand for supplemental bills of particulars in a timely fashion; or, in the alternative,
- 3) Pursuant to CPLR 3126, precluding Plaintiff from introducing any evidence in support of her claims or in opposition to Defendants' defenses at the time of trial or in motion practice on the grounds that Plaintiff has willfully failed to provide discovery that ought to have been disclosed; or in the alternative,
 - 4) Pursuant to CPLR 3042 and CPLR 3126, precluding Plaintiff from introducing any evidence in support of her claims or in opposition to Defendants' defenses at the time of trial or in motion practice on the grounds that Plaintiff has willfully failed to respond to Defendants' demand for supplemental bills of particulars in a timely fashion; or, in the alternative,
 - 5) Pursuant to CPLR 3124, compelling Plaintiff to comply with and respond to all of Defendants' outstanding demands including its initial combined demands and subsequent demands for authorizations and Arons authorizations; or, in the alternative
 - 6) Pursuant to CPLR 3042, compelling Plaintiff to comply with Defendants' demand for supplemental bills of particulars; or, in the alternative,
 - 7) Pursuant to 22 NYCRR 202.27, dismissing the action for Plaintiff's failure to appear at the status conference scheduled for August 14, 2024.

Defendant ROCKLAND THORACIC AND VASCULAR ASSOCIATES, P.C. also moves this Court for an Order (Motion Seq. 002):

- 1) Pursuant to CPLR 3126, dismissing this action in its entirety, with prejudice, based upon plaintiff's willful non-compliance with discovery; or, in the alternative,
- 2) Pursuant to CPLR 3126, precluding plaintiff from introducing any evidence in support of her claims or in opposition to Moving Defendant's defenses at the time of trial or in motion practice on the grounds that Plaintiff has willfully failed to provide discovery that should have been disclosed.

Plaintiff opposes both motions, which have been consolidated for purposes of disposition.

BACKGROUND

This medical malpractice action arises from allegations that moving Defendants were negligent in the management and treatment of Plaintiff's pectus excavatum and failed to obtain proper informed consent for a Nuss procedure. Plaintiff commenced this action on May 9, 2023,

by filing a Summons and Complaint. Issue was joined by Defendant Rockland Thoracic and Vascular Associates, P.C. on August 30, 2023, and by the remaining Defendants on September 1, 2023. Along with their answers, Defendants served initial combined discovery demands and a demand for a bill of particulars.

Between September 2023 and November 2023, Defendants served several supplemental demands for medical and *Arons* authorizations. On January 3, 2024, the Court issued a Preliminary Conference Order directing plaintiff to respond to all outstanding demands and provide authorizations for collateral source records. On February 24, 2024, a stipulation of substitution was filed, naming the Law Firm of John C. Clark as counsel for Plaintiff. On July 5, 2024, Plaintiff served bills of particulars as to the Defendants.

The Court subsequently held several compliance conferences. Plaintiff's counsel did not appear for the scheduled conferences on September 12, 2024, or August 14, 2025. Compliance Conference Orders were entered on November 7, 2024, and April 24, 2025, each directing Plaintiff to provide all outstanding discovery. Additionally, Defendants served good faith letters on September 12, 2024, November 6, 2024, and August 13, 2025, requesting the outstanding responses and authorizations.

On August 14, 2025, following Plaintiff's non-appearance at a status conference, the Court issued an order granting Defendants leave to file the instant discovery motion. Defendants served the order with notice of entry on August 18, 2025. On August 26, 2025, counsel for the parties held a telephonic conference during which Plaintiff's counsel requested a list of specific outstanding items. Defendants' counsel provided courtesy copies of all outstanding demands and the requested list via email on August 26 and August 28, 2025. To date, the requested discovery remains outstanding, and no note of issue has been filed.

The Court notes that although the parties were directed to appear for oral argument on January 6th, 2026, Plaintiff failed to appear. Accordingly, the Court takes the motion on submission.

DISCUSSION

CPLR 3101(a) maintains a policy of “full disclosure of all matter material and necessary in the prosecution or defense of an action.” The Court of Appeals has interpreted this liberally, requiring the disclosure of any facts that assist in good faith trial preparation by sharpening issues and reducing delay (*Allen v. Crowell-Collier Publ'g Co.*, 21 N.Y.2d 403 [1968]). When a party fails to comply with these obligations, CPLR 3126 authorizes the Court to fashion an appropriate sanction, including the striking of pleadings or dismissal of the action, where the failure to disclose is “willful and contumacious”—a state of mind that may be inferred from a persistent pattern of failure to comply with court-ordered discovery deadlines and a lack of adequate excuses for such defaults (*see Siegman v. Rosen*, 270 A.D.2d 14 [1st Dept 2000]).

In opposition to the instant motion, Plaintiff’s counsel asserts that the failure to appear at the August 14, 2025 conference was due to a personal family emergency and further contends that the discovery issues are now moot, as authorizations and supplemental responses were purportedly served in October 2025. Counsel argues that any remaining issues regarding the processing of authorizations are administrative in nature and do not reflect a lack of compliance.

However, the record before the Court compels a different conclusion. The Plaintiff’s history in this matter reveals a chronic disregard for the Court’s authority. Plaintiff has violated at least three separate discovery orders, including the Preliminary Conference Order and the Compliance Conference Order dated April 24, 2025. While Plaintiff claims to have recently cured these defaults, the Defendants have demonstrated that the authorizations provided remain deficient

and unusable for the purpose of obtaining the necessary medical records. A party cannot avoid the consequences of years of dilatory conduct by providing “last-minute” discovery that is incomplete or legally insufficient (*see Gibbs v. St. Barnabas Hosp.*, 16 N.Y.3d 74 [2010]).

The prejudice to the Defendants is manifest. This medical malpractice action involves complex allegations regarding the surgical placement of metal bars; yet, due to Plaintiff’s failures, the Defendants remain unable to conduct basic investigation or prepare a defense more than two years after the commencement of the action. Counsel’s personal excuse for the August 2024 conference, while noted, does not explain the broader two-year history of non-compliance. When a party’s conduct serves to frustrate the disclosure process and ignore the Court’s directives, the striking of the pleading is the appropriate remedy (*Id.*).

Thus, the Court finds that Plaintiff’s repeated failure to adhere to court-mandated dates, coupled with the provision of deficient authorizations after a two-year delay, establishes a pattern of “willful and contumacious” behavior.

Accordingly, it is hereby

ADJUDGED AND ORDERED that the Defendants’ motion to strike the Plaintiff’s complaint pursuant to CPLR 3126 is granted in its entirety; and it is further

ORDERED that the Plaintiff’s complaint is hereby stricken, and the action is dismissed as against Defendants LYALL A. GORENSTEIN, ROCKLAND THORACIC AND VASCULAR ASSOCIATES, P.C., and NEW YORK-PRESBYTERIAN/COLUMBIA UNIVERSITY MEDICAL CENTER; and it is further

ORDERED that Defendants shall serve a copy of this order upon Plaintiff with notice of entry within twenty (20) days of entry of this order; and it is further

ORDERED that within twenty (20) days of the date of this Order, the moving Defendants shall serve a copy of this Order upon the County Clerk and the Clerk of the General Clerk's Office, which shall be effectuated in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases, accessible at the "E-Filing" page on the court's website; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

1/7/2026
DATE

Kathy King
KATHY KING, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE