

Scully v HFZ 235 W 75th St. Owner, LLC

2026 NY Slip Op 31975(U)

May 6, 2026

Supreme Court, New York County

Docket Number: Index No. 158874/2022

Judge: Dana M. Catanzaro

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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. DANA M. CATANZARO

PART 37

Justice

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DONALD SCULLY,

Plaintiff,

- v -

HFZ 235 W 75TH STREET OWNER, LLC, HFZ CAPITAL GROUP, LLC, and 235 WEST 75TH STREET SPONSOR, LLC,

Defendants.

-----X

HFZ 235 W 75TH STREET OWNER, LLC, HFZ CAPITAL GROUP, LLC, and 235 WEST 75TH STREET SPONSOR, LLC,

Third-Party Plaintiffs,

-against-

MARIN WORKFORCE, INC.,

Third-Party Defendant.

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INDEX NO. 158874/2022

MOTION DATE 10/28/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Third-Party Index No. 595403/2024

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for STRIKE PLEADINGS.

In this personal injury action, third-party defendant, MARIN WORKFORCE, INC. (“Marin”) moves for an order pursuant to CPLR 3126, striking plaintiff DONALD SCULLY’s (“plaintiff”) summons and complaint with prejudice for plaintiff’s failure to provide outstanding discovery; or in the alternative, pursuant to CPLR 3124, compelling discovery responses from the plaintiff; and for other and further relief as may be just and proper.

Plaintiff opposes the instant motion on the grounds that the relief sought by Marin is moot, as plaintiff claims to have fully complied with all outstanding discovery obligations prior to the

return date of the instant motion. Plaintiff's counsel further claims it made good faith efforts throughout discovery to timely respond and provide authorizations as requested, and that in light of plaintiff's compliance and Marin's receipt of the verified bill of particulars and responses to discovery demands, there is no basis for the court to compel further discovery or impose sanctions.

In reply, Marin claims that plaintiff's responses remain incomplete as plaintiff failed to provide a social media authorization, and Marin has yet to receive the unredacted response to combined demands and the unredacted authorizations for medical records. Marin further claims that plaintiff only provided a response to the bill of particulars as to third-party plaintiffs and did not provide a response to Marin's demand for a bill of particulars. The Court notes that plaintiff filed a response to Marin's bill of particulars on November 7, 2025 (NYSCEF Doc. No. 45). Thus, any argument that plaintiff failed to provide a response is unavailing.

Marin seeks dismissal of the complaint, alleging that plaintiff failed to comply with the compliance conference order and repeated demands for disclosure. Marin further claims plaintiff failed to provide basic, highly relevant and material discovery. Striking a party's pleading 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 Mateo v. City of New York*, 274 A.D.2d 337 (1st Dept 2000) quoting *Corner Realty 30/7 v. Bernstein Mgt. Corp.*, 249 A.D.2d 191, 193 (1st Dept 1998). Generally, the nature and degree of the penalty to be imposed on a motion pursuant to CPLR 3126 is within the discretion of the court. *See id.* A court can infer willfulness from repeated failures to comply with court orders or discovery demands without a reasonable excuse. *See LaSalle Talman Bank, F.S.B. v. Weisblum & Felice*, 99 A.D.3d 543 (1st Dept 2012).

Here, Marin has not demonstrated a pattern of plaintiff's willful non-compliance with discovery. Plaintiff responded to Marin's discovery demands dated July 15, 2024 on November 7, 2025 (NYSCEF Doc. No. 45). Thus, there is no reason to disturb the strong preference that cases be decided on the merits, and plaintiff's complaint is not stricken. *See Youwanes v. Steinbrech*, 193 A.D.3d 492, 493 (1st Dept 2021).

With respect to Marin's allegation that certain items of discovery remain outstanding, the Court agrees that original, unredacted responses to Marin's combined demands were not provided via NYSCEF. Marin further alleges it did not receive such responses in the mail. Accordingly, plaintiff is directed to provide unredacted responses to Marin's combined demands, including unredacted, original authorizations for medical records. Regarding Marin's demand for social media information, Marin fails to make a sufficient showing that unfettered access to plaintiff's social media is necessary in this matter. The threshold inquiry for courts addressing disputes over the scope of social media discovery is not whether the materials sought are private, but whether they are reasonably calculated to contain relevant information. *See Forman v. Henkin*, 30 N.Y.3d 656 (2018). Furthermore, to "warrant discovery, [a party] must establish a factual predicate for [its] request by identifying relevant information in [the social media account]." *See Tapp v. New York State Urban Dev. Corp.*, 102 A.D.3d 620 (1st Dept 2013). Here, Marin's demand for plaintiff's social media information is overly broad and Marin fails to set forth a factual predicate for its request. Thus, this portion of Marin's motion is denied.

Accordingly, it is hereby:

ORDERED, that third-party defendant MARIN WORKFORCE, INC.'s motion pursuant to CPLR 3126 and 3124 is granted in part to the extent that plaintiff DONALD SCULLY shall

provide unredacted responses to Marin’s combined demands, including unredacted, original authorizations for medical records, within 30 days of entry of this order; and it is further

ORDERED, that all other requested relief is denied; and it is further

ORDERED, that counsel for all parties shall appear for a status conference on May 28, 2026, at 9:30 a.m. in Room 1127A at 111 Centre Street, New York, New York.



<u>5/6/2026</u>			<u>DANA M. CATANZARO, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE