

Bhugra v Massachusetts Cas. Ins. Co.
2012 NY Slip Op 32577(U)
October 10, 2012
Sup Ct, NY County
Docket Number: 110825/07
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

MANINDER BHUGRA,

Plaintiff,

- v -

MASSACHUSETTS CASUALTY INSURANCE
COMPANY, CENTRE LIFE INSURANCE COMPANY,
CENTRE SOLUTIONS, ZURICH INSURANCE,
ZURICH AMERICAN INSURANCE, VIDECKIS
FINANCIAL SERVICES, DISABILITY MANAGEMENT
SERVICES, KEN VIDECKIS, KIM OLDEN, CHRIS
SALVI, AND JOHN DOES 1-100 et al.,
Defendants.

Index No.: 110825/07

Motion Date: 03/27/12

Motion Seq. No.: 09

Motion Cal. No.: _____

The following papers, numbered 1 to 4 were read on this motion to reargue.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits - Exhibits _____

FILED

OCT 11 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

PAPERS NUMBERED

1

2, 3

4

Cross-Motion: ☒ **Yes** ☐ **No**

Upon the foregoing papers,

Pro se plaintiff Maninder Bhugra moves, pursuant to CPLR 2221 (d), for leave to renew and reargue the November 29, 2011 order to show cause, which the court declined to sign. The order to show cause sought a stay on the proceedings pending the outcome of an appeal of an order dated October 19, 2011.

Defendants Massachusetts Casualty Insurance Company, Centre Life

Check One: ☒ **FINAL DISPOSITION** ☐ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**

☐ **SETTLE/SUBMIT ORDER/JUDG.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Insurance Company, Centre Solutions and Zurich American Insurance Company (collectively, the MCIC defendants) cross-move, pursuant to CPLR 3126, for an order striking the complaint and dismissing the action. The MCIC defendants are also seeking costs and attorneys' fees.

The underlying action stems from a breach of contract claim against the MCIC defendants in which plaintiff alleges that they wrongly failed to pay her disability insurance after she was unable to continue working in her profession. In February 2008, the MCIC defendants moved to dismiss the six causes of action, and, as a result, the second, fourth, fifth and sixth causes of action were dismissed as against the MCIC defendants.

Between the time frame of June 2008 and January 2010, plaintiff retained and terminated approximately four different lawyers. One of plaintiff's former lawyers advised the MCIC defendants in 2009 that plaintiff would be interested in a settlement. As a result, the MCIC defendants sought certain discovery. A conference order in December 2009 instructed the plaintiff to provide certain discovery and interrogatories. Plaintiff sought a stay of all proceedings in the Appellate Division.

On January 27, 2010, the Appellate Division, First Department, denied plaintiff's motion seeking a stay on the proceedings. The order granted the then-current counsel's

application to be removed as counsel. The MCIC defendants state that, despite the denial of the stay, the discovery requested pursuant to the December 2009 conference order is still outstanding.

In March 2010, the MCIC defendants served an answer to the complaint, along with additional requests for discovery. Plaintiff did not accept service of this answer, claiming that it was untimely.

Since March 2010, plaintiff has filed multiple orders to show cause, one of which being on April 2, 2010, seeking to stay and/or vacate the discovery proceedings. In response, the MCIC defendants cross-moved to compel plaintiff to accept their answer and to produce discovery. On January 31, 2011, the court denied plaintiff's April 2, 2010 order to show cause. It held that plaintiff shall accept service of the MCIC defendants' answer. The order also stated that, if plaintiff did not file an amended complaint by March 15, 2011, she is ordered to respond to the MCIC defendants' request for interrogatories and discovery. Plaintiff did not file an amended complaint, nor did she provide the outstanding discovery to the MCIC defendants.

Instead, plaintiff appealed this January 31, 2011 order. The Appellate Division, First Department, issued a decision on April 17, 2012. The Court held that this court's order should be affirmed and that plaintiff should be compelled to accept the

MCIC defendants' answer. It stated, "[p]laintiff had no basis to reject the MCIC defendants' answer, which was timely served in accordance with the written stipulation that was signed by plaintiff's prior counsel and counsel for the MCIC defendants." Bhugra v Massachusetts Cas. Ins. Co., 94 AD3d 563, 563 (1st Dept 2012).

Plaintiff has subsequently filed appeals and more orders to show cause. The MCIC defendants have also cross-moved for costs and sanctions, which have also been denied. For example, in October 2011, plaintiff filed an order to show cause for default judgment as against the MCIC defendants. The court denied plaintiff's order to show cause, stating that it was already resolved by the January 31, 2011 order, and directed the parties to attend a status conference on November 29, 2011. Plaintiff appealed this October 2011 order.

Then, on November 29, 2011, plaintiff presented another order to show cause seeking a stay on the proceedings, which the court declined to sign. Apparently, plaintiff never served this order to show cause on the MCIC defendants, since plaintiff argued that the MCIC defendants had never appeared in the lawsuit.

A conference was held on the record on November 29, 2011, to address plaintiff's most recent order to show cause. The court stated that plaintiff sought to stay proceedings, but that it was

unclear to the court what proceedings exactly plaintiff wanted to stay. During the course of the conference, plaintiff admitted that she never served the MCIC defendants with the latest order to show cause, allegedly because counsel never made an appearance in the action. The court then asked counsel to confirm who he represented.

The court noted in its conversation to plaintiff, "[s]o you spend a lot of time unnecessarily on motions, which I told you yesterday, but today I wanted you to refresh my recollection." The court explained to plaintiff that even though she is entitled to appeal the court's orders, the plaintiff is not entitled to ignore the orders of the court. The court stated the following, in pertinent part:

The Court has been imploring Miss Bhugra to go ahead and progress her lawsuit by making her best efforts to respond to the discovery requests. The interrogatories require her to answer each question and sign it before a notary. I don't believe that is very burdensome. And the document requests just provide her to go through whatever records she has. I know she has indicated in the past that prior counsel has the records and has not given her the records and she has no records or that the insurance company has no records. I've indicated to her that she should just go through each of the document requests, search for whatever record is being sought there, and then indicate by affidavit if she-if it doesn't exist or if she doesn't have it in her possession. That is a way she could comply with discovery requests. She has been consistent in her refusal to carry out what the Court has indicated she must do in order to progress her lawsuit. And I will state that, Miss Bhugra, certainly you have a right to appeal any order of this Court and perfect that appeal and obtain a decision of the Court, but

such does not entitle you to ignore my orders. You're persisting. You're basically committed to your particular interpretation of what the law is. You're not an attorney. You're a lay person. But you have every right to represent yourself. However, I will observe that you are continuing to put your lawsuit in peril.

The court then concluded that it would be futile to set up additional dates for discovery, but that it would just extend the time for plaintiff to file a note of issue until February 29, 2012. The court also advised the parties that the MCIC defendants will "have to pursue whatever remedies" they wished under the CPLR. The court then again noted that it did not believe the outstanding discovery requests were burdensome.

Plaintiff then filed this current motion, for renewal/reargument of the November 29, 2011 order to show cause seeking a stay of the proceedings pending the appeal of the October 2011 order. She alleges that the October 2011 determination, which the court determined was identical to the January 31, 2011 determination, is incorrect in that the MCIC defendants' answer is defective, and a default judgment should be entered as against the MCIC defendants. Plaintiff also sought a stay of the proceedings pending the outcome of the appeal.

Plaintiff alleges that, pursuant to CPLR 2221 (d) (2), the matter has been overlooked by the court in that the court lacks jurisdiction to hear the MCIC defendants' arguments. Plaintiff explains that, among other things, since the MCIC defendants

disregarded jurisdictional requirements, the MCIC defendants now have no right to be heard. Plaintiff further maintains that the MCIC defendants made numerous misrepresentations to the court.

Plaintiff additionally seeks a stay, pending the resolution of her appeals.

The MCIC defendants seek to have this action dismissed under CPLR 3126 for plaintiff's willful failure to comply with discovery requests. In response, plaintiff argues that the MCIC defendants misrepresent her lack of cooperation. She also claims that the MCIC defendants engage in "sharp" practices in that, among other allegations, they released her private information.

"A motion for reargument ... is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law." Mangine v Keller, 182 AD2d 476, 477 (1st Dept 1992).

Plaintiff has alleged multiple times that the MCIC defendants' answer should not be accepted for various reasons. Plaintiff also maintains that new information is available, in that the MCIC defendants are allegedly once again failing to timely respond to the obligations of this litigation. In connection with her claim that the court lacks jurisdiction, she further contends that the MCIC defendants, among other things, never filed a notice of appearance. She addressed this

allegation with the court during a transcribed court conference, and also in her other motions, specifically one dated April 2010.

According to CPLR 2221 (d) (2), a motion to reargue cannot include any matters of fact not included in the prior motion. The record does not indicate any new information that has not been presented to the court in the past. Since no information has been "overlooked" the motion for reargument is denied. Furthermore, the plaintiff's motion is essentially moot in that the Appellate Division recently upheld the court's January 31, 2011 order, and found that the MCIC defendants' answer was timely served, and that plaintiff has no basis to reject it. This determination serves to reject plaintiff's argument that the MCIC defendants lack standing to be heard in court.

Also, pursuant to CPLR 2221 (d) (2), plaintiff seeks to renew her motion for a stay. Plaintiff is arguing that the action should be stayed pending the appellate determination of whether or not the MCIC defendants' answer is late. She claims that her challenge to the late answer, if decided in her favor, would "determine the outcome of the whole case". As such, she contends that a stay of the proceedings is warranted. However, plaintiff has not demonstrated that the court has overlooked any facts. As previously mentioned, plaintiff has sought a stay of the proceedings, which has been denied. She has not offered any new information which would support this motion to renew.

As described above, the current motion is to renew her order to show cause dated November 29, 2011 which sought a stay pending the Appellate Division determination of her appeal on the court's October 19, 2011 order. In the October 19, 2011 order, the court held that the current motion was resolved by the January 31, 2011 motion, which directed plaintiff to accept service of the answer. Since the Appellate Division confirmed the January 31, 2011 order, and held that the answer was not defective, plaintiff's request for a stay is moot.

The MCIC defendants have cross-moved, pursuant to CPLR 3126, for an order striking plaintiff's complaint for failure to comply with the court's orders. CPLR 3126 states the following, in pertinent part:

If any party, or a person who at the time a deposition is taken or an examination or inspection is made ... refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

* * *

3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

The Court of Appeals has held the following:

If the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity. Indeed, the Legislature, recognizing the need for courts to be able to command compliance with their disclosure directives, has specifically provided that a court may make such

orders ... as are just, including dismissal of an action (CPLR 3126). Finally, we underscore that compliance with a disclosure order requires both a timely response and one that evinces a good-faith effort to address the requests meaningfully [internal quotation marks omitted].

Kihl v Pfeffer, 94 NY2d 118, 123 (1999).

The plaintiff commenced this action approximately four years ago, yet has not responded to the MCIC defendants' requests for discovery. The parties attended court conferences for the purposes of conducting discovery and the court has issued written and verbal orders directing plaintiff to comply with outstanding discovery; for example, a December 2009 conference order required the plaintiff to provide certain discovery by April 15, 2010. Plaintiff failed to comply.

Subsequently, a January 31, 2011 order directed plaintiff to respond to the MCIC defendants' request for discovery, appear for a deposition and comply with a prior conference order, all before May 13, 2011. According to the MCIC defendants, a status conference was held on May 3, 2011 during which the court directed plaintiff to respond to the additional discovery. Plaintiff has yet to comply with any of the outstanding requests.

At the last status conference, on November 29, 2011, the court acknowledged that it had been "imploring" plaintiff to make the best efforts she could to comply with the discovery. The court continued that the plaintiff deliberately does not follow the orders of the courts and consistently refuses to progress the

lawsuit. The note of issue was extended to February 2012, and the court advised the MCIC defendants to pursue any remedies necessary under the CPLR.

Plaintiff has appealed every order from the court. She has hired and terminated approximately four different lawyers. For years now, she has made the same arguments, which have already been rejected, as a basis for not responding to anything outstanding. She has ignored the court orders "with impunity" and has not made a "good-faith" effort to provide discovery. Kihl v Pfeffer, 94 NY2d at 123. As of this date, it appears that plaintiff did not file a note of issue, nor has she complied with any outstanding discovery requests.

In response to the MCIC defendants' cross motion, plaintiff argues that she is using her rights afforded to her for appellate review and that she is not delaying. She also claims that, among other things, the MCIC defendants have misrepresented her behavior. However, plaintiff's arguments are without merit. All of her appeals have been denied, and she has refused to comply with the court's past and current directives. Although she claims that she has not delayed, she has not provided the MCIC defendants with any of their outstanding discovery requests nor has she filed a note of issue.

The Appellate Division, First Department, has held that the Supreme Court properly "exercised its discretion" to strike the

pleadings when the parties "offered no excuse for their repeated noncompliance with the court's disclosure orders, and their conduct throughout the course of this litigation has been dilatory, evasive, obstructive and ultimately contumacious [internal quotation marks and citation omitted]." Arts4All, Ltd. v Hancock, 54 AD3d 286, 286 (1st Dept 2008), *affd* 12 NY3d 846 (2009), *cert denied* 130 S Ct 1301 (2010).

Accordingly, as set forth above, the record demonstrates that plaintiff has engaged in a pattern of noncompliance with court orders. See e.g. Goldstein v CIBC World Mkts. Corp., 30 AD3d 217, 217 (1st Dept 2006) ("Plaintiff's year-long pattern of noncompliance with the court's repeated compliance conference orders gave rise to an inference of willful and contumacious conduct"). As such, the MCIC defendants' motion to dismiss the complaint is granted.

While plaintiff, citing to Baczkowski v Collins Constr. Co. (89 NY2d 499, 503 [1997]), is correct in that CPLR 3126 is "extremely forgiving of litigation delay," the Court has also recognized that "[i]t is a court's prerogative to control its calendar and expeditiously dispose of the volume of cases before it [internal quotation marks and citation omitted]." Arts4All, Ltd. v Hancock, 54 AD3d at 286. Accordingly, as set forth above, the record demonstrates that plaintiff has engaged in a pattern of noncompliance with court orders.

As such, the MCIC defendants' motion to strike the complaint, and to dismiss the action, pursuant to CPLR 3126, is granted. However, costs and attorneys' fees will not be awarded.

The court has considered plaintiff's other contentions and finds them without merit.

Accordingly, it is

ORDERED that the motion of plaintiff Maninder Bhugra for leave to renew and reargue the November 29, 2011 order to show cause is denied; and it is further

ORDERED that the cross motion of Massachusetts Casualty Insurance Company, Centre Life Insurance Company, Centre Solutions and Zurich American Insurance Company to strike plaintiff's complaint and dismiss the action is granted and the complaint is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This is the decision and order of the court.

Dated: October 10, 2012

ENTER:

FILED

OCT 11 2012

NEW YORK
COUNTY CLERK'S OFFICE

Debra A. James
DEBRA A. JAMES

J.S.C.