

<b>Lazar Sanders Thaler &amp; Assoc., LLP v Lazar</b>
2013 NY Slip Op 33999(U)
August 26, 2013
Supreme Court, Nassau County
Docket Number: 3736/12
Judge: Denise L. Sher
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**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER  
Acting Supreme Court Justice

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LAZAR SANDERS THALER & ASSOCIATES, LLP,

Plaintiff,

- against -

TERRY LAZAR, LAZAR BRODER, LLP, PURESAFE  
WATER SYSTEMS, INC. f/k/a WATER CHEF, INC.,  
AMERICANA PROPERTIES, MITCH MEISNER d/b/a  
MEISNER GALLERY, SPORTS IMAGE  
INTERNATIONAL, LLC, BROOKLYN AMBULATORY  
CENTER, AMBULATORY SURGERY PHYSICIANS  
ASSOC., AMERICAN FRIENDS OF TZOHAR, DAVID  
JOHANSEN, ISLAND BOYS MOMBO, INC., MOSHE  
GRANIT, NAOMI GRANIT, GRANIT MEDICAL  
INNOVATIONS, LLC, DR. ROBERT HAAR and  
RHA REALTY,

Defendants.

TRIAL/IAS PART 33  
NASSAU COUNTY

Index No.: 3736/12  
Motion Seq. No.: 03  
Motion Date: 08/08/13

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**The following papers have been read on this motion:**

	Papers Numbered
Notice of Motion, Affirmations and Exhibits	1

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

Plaintiff moves, pursuant to CPLR § 3216, for an order striking the Answers of defendants Sports Image International LLC, American Friends of Tzohar, David Johansen, Island Boys Mombo, Inc., Moshe Granit, Naomi Granit and Granit Medical Innovations, LLC for failing to (a) comply with the February 28, 2013 Order of the Court directing said defendants to

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appear in court on April 1, 2013 to proceed in this matter, (b) comply with the Preliminary Conference Order in this action dated September 24, 2012 and (c) respond to plaintiff's Demand for a Bill of Particulars dated July 31, 2012 and plaintiff's Notice for Discovery and Inspection dated July 31, 2012; and move for an order awarding attorneys' fees, costs and sanctions. No opposition was submitted to the motion.

The instant action was commenced by the filing and service of a Summons and Verified Complaint on or about March 22, 2012. *See* Plaintiff's Affirmation in Support Exhibit A. Issue was joined on or about June 21, 2012. *See* Plaintiff's Affirmation in Support Exhibit B.

On July 31, 2012, plaintiff served its Demand for a Verified Bill of Particulars on the aforementioned defendants' counsel. *See* Plaintiff's Affirmation in Support Exhibit C. Also on July 31, 2012, plaintiff served the aforementioned defendants' counsel with its first Notice for Discovery and Inspection. *See* Plaintiff's Affirmation in Support Exhibit D. Counsel for plaintiff submits that, notwithstanding the requirements of CPLR §§ 3042 and 3120, the aforementioned defendants have failed to reply to either plaintiff's Demand for a Verified Bill of Particulars or its Notice for Discovery and Inspection.

Counsel for plaintiff further submits that, on September 24, 2012, the aforementioned defendants' counsel failed to appear for the scheduled Preliminary Conference in this matter. Counsel for plaintiff asserts, "I nevertheless contacted defendants' non appearing counsel, Mark Goldstein, who advised that he was unable to attend the Preliminary Conference. With Mr. Goldstein's consent, we agreed upon dates for the Preliminary Conference Order. Among other things, the order provided that the defendants would serve their responses to Plaintiff's discovery demands and Demand for Bill of Particulars on or before November 22, 2012." *See* Plaintiff's

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Affirmation in Support Exhibit E. However, the aforementioned defendants failed to serve their Verified Bill or Particulars or reply to plaintiff's discovery demands, and, as of date, have continued to fail to do so.

On February 28, 2013, this Court issued a Decision and Order relieving Mark Goldstein, Esq. as counsel for the aforementioned defendants. Said Decision and Order stated that it was "**ORDERED**, that all proceedings in this matter shall be and are stayed until April 1, 2013, and all parties shall appear in IAS Part 33, on April 1, 2013, at 9:30 a.m., at which time this matter shall proceed. The Certification Conference scheduled for March 19, 2013 is hereby adjourned to the April 1, 2013 date. **ORDERED**, that upon the failure of the defendants to appear on April 1, 2013, at 9:30 a.m., defendants' Answer shall be stricken." See Plaintiff's Affirmation in Support Exhibit I.

Counsel for plaintiff submits that only defendant Terry Lazar appeared in court on April 1, 2013. Defendants Sports Image International LLC, American Friends of Tzohar, David Johansen, Island Boys Mombo, Inc., Moshe Granit, Naomi Granit and Granit Medical Innovations, LLC did not appear in court on April 1, 2013 as mandated by this Court's February 28, 2013 Decision and Order, nor have they subsequently appeared in the action. Accordingly, pursuant to the terms of the February 28, 2013 Decision and Order, the Answer of the said defendants should be stricken and a judgment entered against each of them after an Inquest.

CPLR § 3126 provides the "[p]enalties for refusal to comply with order or to disclose." It reads, "[i]f any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise

under a party's control, 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: 1. An order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or 2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or 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 imposition of sanctions pursuant to CPLR § 3126 is a determination to be made within the sound discretion of the Court. Although the Court has broad discretion in determining the appropriate sanction pursuant to CPLR § 3126, the "general rule is that a court should only impose a sanction commensurate with the particular disobedience it is designed to punish and go no further." *See Rossal-Daub v. Walter*, 58 A.D.3d 992, 871 N.Y.S.2d 751 (3d Dept. 2009) *citing Landrigen v. Landrigen*, 173 A.D.2d 1011, 569 N.Y.S.2d 843 (3d Dept. 1991).

In the instant matter, defendants Sports Image International LLC, American Friends of Tzohar, David Johansen, Island Boys Mombo, Inc., Moshe Granit, Naomi Granit and Granit Medical Innovations, LLC have willfully violated Orders of this Court. Said defendants have failed to respond to a single discovery demand, or appear in Court on April 1, 2013, despite being ordered to do so by this Court. Plaintiff has demonstrated the aforementioned defendants' "unequivocally clear, persistent, willful and intentional refusal to engage in discovery

proceedings.”

As previously noted, defendants Sports Image International LLC, American Friends of Tzohar, David Johansen, Island Boys Mombo, Inc., Moshe Granit, Naomi Granit and Granit Medical Innovations, LLC failed to submit any opposition to the instant motion.

Accordingly, plaintiff's motion, pursuant to CPLR § 3216, for an order striking the Answers of defendants Sports Image International LLC, American Friends of Tzohar, David Johansen, Island Boys Mombo, Inc., Moshe Granit, Naomi Granit and Granit Medical Innovations, LLC for failing to (a) comply with the February 28, 2013 Order of the Court directing said defendants to appear in court on April 1, 2013 to proceed in this matter, (b) comply with the Preliminary Conference Order in this action dated September 24, 2012 and (c) respond to plaintiff's Demand for a Bill of Particulars dated July 31, 2012 and plaintiff's Notice for Discovery and Inspection dated July 31, 2012; and for an order awarding attorneys' fees, costs and sanctions is hereby **GRANTED**.

The matter is hereby set down for an Inquest on damages against said defendants to be held after the trial or resolution of this action.

It is further ordered that the remaining parties shall appear for a Certification Conference on August 27, 2013, at 9:30 a.m., in IAS Part 33 of the Nassau County Supreme Court, 100 Supreme Court Drive, Mineola, New York.

This constitutes the Decision and Order of this Court.

**ENTERED**

AUG 29 2013

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

Dated: Mineola, New York  
August 26, 2013

ENTER:

  
DENISE L. SHER, A.J.S.C.