

Kayantas v Restaurant Depot, LLC
2017 NY Slip Op 33154(U)
December 8, 2017
Supreme Court, Nassau County
Docket Number: 603995/15
Judge: Antonio I. Brandveen
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ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: **ANTONIO I. BRANDVEEN**
J. S. C.

PANAGIOTA KAYANTAS AS THE
ADMINISTRATOR OF THE ESTATE OF
KOSTAS KAYANTAS,

TRIAL / IAS PART 31
NASSAU COUNTY

Index No. 603995/15

Plaintiff,

Motion Sequence No. 006

- against -

RESTAURANT DEPOT, LLC,

Defendant.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1</u>
Answering Affidavits	<u>2</u>
Replying Affidavits	<u>3</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

The plaintiff moves pursuant to CPLR 3126 to strike the defendants' answer for the failure to provide discovery, and to preclude the defendant from offering any evidence at the time of trial. The plaintiff also moves to extend the plaintiff's time to file the note of issue. The defendant opposes the motion.

The plaintiff asserted the defendants willfully and contumaciously resorted to dilatory tactics to prolong the litigation, and hindered the plaintiff's ability to prosecute this action. The plaintiff enumerates various incidents of the defendants' noncompliance

with court orders, including adjournments due to the defendant's failure to produce a witness for scheduled depositions. The plaintiff avers the information sought is relevant, material, exclusively within the defendants' possession and control, and without it the plaintiff cannot adequately prosecute this matter.

The defendant asserts the defense responded to all discovery demands, and produced witnesses with actual knowledge of the circumstances and the occurrence. The defendant avers a majority of the plaintiff's demands are over broad, unduly burdensome, irrelevant and could not be expected to lead to the discovery of any admissible evidence.

In reply to the defense opposition, the plaintiff points out this motion is the third application for the same relief. The plaintiff asserts the defendant hindered, delayed, ignored the plaintiff's certified letters, phone calls and motions without a reasonable excuse.

The law requires "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof" (CPLR 3101). The Court determines the plaintiff satisfies the burden for conditionally striking the defendants' answer for the failure to provide discovery, and precluding the defendant from offering any evidence at the time of trial. The matters sought by the plaintiff from the defendant are material and necessary in the prosecution of this personal injury action. The plaintiff proffers a good faith showing of attempts to resolve the discovery dispute with the defendants, and shows the discovery is relevant, material, exclusively within the

defendants' possession and control, and without it the plaintiff cannot adequately prosecute this matter. The plaintiff clearly demonstrates the defendant acted in a pattern of willful and contumacious conduct or its equivalent in failing to provide the discovery recited in the plaintiff's moving papers (*Batez v. Baez*, 299 A.D.2d 382 [2d Dept 2002]). That conduct was in contravention to court orders and conference directives. The plaintiff's discovery demands are supported by documentation for material and relevant information which will lead to genuine admissible evidence at the time of trial. The Court denies that branch of the motion seeking to extend the plaintiff's time to file the note of issue.

In opposition, the defendant fails to provide a reasonable excuse or explanation for not providing the discovery. The defense shows awareness of the plaintiff's demand dated May 25, 2017, but has not complied with it. The defense is also aware of the plaintiff's demand dated June 22, 2017, which request an authorization for prior claims of trip and fall incidents in the aisles of the subject restaurant. That information is not privileged, work created by the defense for litigation or attorney work product. The defense failed to properly raise objections to the plaintiff's demands for discovery and inspection dated April 27, 2017, May 25, 2017 and June 22, 2017

ORDERED that the motion is GRANTED to strike the defendants' answer for the failure to provide all discovery demanded by the plaintiff without exception, and to preclude the defendant from offering any evidence at the time of trial unless the

defendant fully complies the plaintiff's demands dated April 27, 2017, May 25, 2017 and June 22, 2017 within 30 days after service of a copy of this order with notice of entry by the plaintiff's attorney upon the defense attorney.

This decision will constitute the decision and order of the Court. All applications not specifically addressed are denied.

So ordered.

Dated: **December 8, 2017**

ENTER:



J. S. C.

NON FINAL DISPOSITION

ENTERED

DEC 12 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE