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| <b>Sledziejowska v Wrobel</b>  |
| 2018 NY Slip Op 32593(U)   |
| October 5, 2018  |
| Supreme Court, New York County   |
| Docket Number: 653538/2016   |
| Judge: Melissa A. Crane  |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

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ELZBIETA SLEDZIEJOWSKA and JERZY  
SLEDZIEJOWSKI,

Index No.: 653538/2016

Plaintiffs,

- against -

MONIKA WROBEL,

Defendant.

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CRANE, J.:

Defendant Monika Wrobel, plaintiffs' former daughter-in-law, moves to dismiss the complaint, alleging that plaintiffs Elzbieta Sledziejowska (Sledziejowska) and Jerzy Sledziejowski repeatedly failed to comply with discovery orders.

Plaintiffs allege that they loaned their son Roman Sledziejowski (Roman) \$240,000 during his marriage to defendant. The promissory note shows that July 1, 2010 was the loan date, June 30, 2012 was the due date on the loan, and the interest rate was 5% per annum (NYSCEF #5).

Roman and defendant subsequently divorced. Their divorce agreement, dated November 28, 2012, divided their debts between them, with defendant agreeing to assume Roman's debt to his parents (NYSCEF # 6, at 19). Plaintiffs commenced this action to recover the loan amount from defendant.

The parties engaged in discovery. On July 13, 2017, at a compliance conference, the court ordered plaintiffs to produce the following classes of documents: 1) to the extent not produced already, all bank statements reflecting the \$240,000 transferred by plaintiffs to Roman; 2) all bank statements of plaintiffs from January 1, 2008 through December 31, 2011; 3) all documents related to the transfer to plaintiffs of 1,000 shares of a company known as MLR

Development (MLR); 4) all documents indicating Roman's repayment of loans to plaintiffs from 2003 through 2011; and 5) all documents related to receipt of monies by plaintiffs from their daughter (Roman's sister) or from Roman's current wife.

On September 20, 2017, plaintiffs served the First Supplemental Responses. Defendant alleges that plaintiffs still refused to provide defendant with their bank account statements, including the statements showing the \$240,000 loaned to their son and other monies given or lent to him or repaid by him.

On November 2, 2017, at another discovery conference, the court issued an order noting that there were significant questions about the completeness of plaintiffs' production of bank statements. On December 8 2017, at another discovery conference, the court directed plaintiffs to respond in full no later than December 18, 2017, noting that significant discovery owed by plaintiffs was outstanding. Around December 18, plaintiffs forwarded their Second Supplemental Responses.

Defendant claims that plaintiffs have not fully complied with disclosure requests and orders. Plaintiffs respond to the motion by claiming that they complied with the discovery orders in full. Defendant's objections to plaintiffs' disclosure and plaintiffs' replies will be discussed seriatim.

In the attorney affirmation in support of the instant motion, defendant states that the Second Supplemental Response "included what looks like all bank statements for the period of January 2008 through December 2011" and also included copies of checks from three banks other than the banks which plaintiffs named in their interrogatories as the place where they kept their accounts (NYSCEF #40, ¶ 33). This shows, according to defendant, that there are other

bank accounts from which plaintiffs have failed to provide statements and that plaintiffs have failed to provide all the documentation indicating money transferred to their son.

In the attorney affirmation opposing the motion (NYSCEF #60, at 11) and in the opposing affidavit by Sledziejowska, plaintiffs state that two of those three checks were drawn against their credit card accounts, not banks, and that one was drawn against their home equity line of credit (HELOC) at another bank. The attorney further states that these three checks were sent to defendant for the first time in June 2017, contrary to defendant's allegation that they were produced for the first time as part of the Second Supplemental Responses.

Defendant points to a check for \$237,500, dated January 13, 2010, from Roman to plaintiffs indicating repayment of a loan. Defendant seems to claim that this check shows that the loan to Roman was repaid (NYSCEF #40, ¶ 37). Sledziejowska responds that this check was in repayment of a loan from plaintiffs to Roman from the aforementioned HELOC, not the loan sued upon in this action. She says that Roman repaid the HELOC loan before plaintiffs loaned him \$240,000, which was in July 2010 (NYSCEF #61, ¶ 8). Sledziejowska says that "over the years," from January 2003 through December 2011, she and her husband loaned their son a total of \$404,191 (*id.*, ¶ 9).

Defendant claims that, while plaintiffs have produced some documents related to paying money to their daughter, they have failed to produce documents related to the receipt of money from her or from their current daughter-in-law. Plaintiffs say that they produced all the bank statements from the two joint accounts maintained by Sledziejowska and their daughter, that they produced all the records showing payments from their daughter, and that plaintiffs never received any money from their current daughter in law from 2003-2011, the requested time period (NYSCEF #61, ¶ 14-15).

Defendant wants the bankruptcy papers from Roman's personal bankruptcy proceeding (he filed on January 15, 2013), including papers related to transfer of MLR stock. Plaintiffs state that they gave defendant whatever they had from Roman's bankruptcy and that such proceedings is a matter of public record. Plaintiffs' attorney affirmation states that he has no such records in his possession.

Sledziejowska states that Roman gave them 1,000 shares in MLR in return for which they forgave the \$404,191 loan to Roman, and that they have produced all the documents for that transaction (NYSCEF #61, ¶ 9-10). Defendant states that while plaintiffs provided the stock transfer agreement, they did not provide the loan documents referred to in section one of the agreement. Section one of the stock purchase agreement refers to a loan of \$404,191, "borrowed in various tranches and on various dates between January 1, 2003 and December 31, 2011" (NYSCEF #53). Plaintiffs do not claim that they produced the records relating to the \$404,191 loan to Roman.

In the attorney affirmation supporting the motion and in the reply affirmation, defendant claims that plaintiffs did not produce bank statements showing the \$240,000 loan made to Roman (NYSCEF #40, 81). However, in Roman's affidavit in further opposition to the motion, he alleges that the monies constituting the \$240,000 loan were paid from his parents' money market account to certain companies owned by him (NYSCEF #84, ¶2). Plaintiffs' Second Supplemental Response includes bank statements showing transfers from the money market account on different dates in this amount and order: \$100,000, \$2,000, \$45,000, and \$105,000 (NYSCEF #87, at 88, 100, and 122 of 242). Roman's affidavit names the same sums, pay dates, and payees identified on the bank statements. These figures add up to \$252,000.

It appears that defendant was not able to identify the \$240,000 to Roman (assuming that is the loan represented in the money market records), because the records do not name Roman. Only the names of his companies appear. The affidavit in which Roman identifies the loan recipients as his companies was submitted after defendant submitted her reply to plaintiffs' opposition to the motion.

Defendant moves pursuant to CPLR 3126 ("Penalties for refusal to comply with order or to disclose"). The motion is denied. To the extent that plaintiffs let some discovery deadlines go by without producing all that was demanded or ordered, their conduct does not call for any penalty, particularly the drastic remedy of dismissing a pleading (*see Matter of Hunter Mech. Corp. v Salkind*, 237 AD2d 180, 180 [1<sup>st</sup> Dept 1997]). Such a penalty is warranted when a party's conduct has been deliberate or contumacious (*id.*) or egregiously dishonest (*see Peters v Peters*, 146 AD3d 503, 503 [1<sup>st</sup> Dept 2017]). That kind of conduct has not occurred here. In fact, defendant acknowledges that the Second Supplemental Response includes all of the bank statements requested, with the possible exception of the statements concerning the \$404,191 loan to Roman and any other records concerning HELOC loans to Roman. Outstanding disclosure issues can be discussed at the next conference.

Accordingly, it is

ORDERED the court denies defendant's motion; and it is further ordered that

ORDERED that the parties are directed to appear for a status conference in Room 30471

Thomas Street, on January 29, 2019, at 9:30am.

Dated: 10-5-2018

ENTER:

J.S.C