

Murray v Sehgal

2018 NY Slip Op 33070(U)

October 29, 2018

Supreme Court, Bronx County

Docket Number: 28324/2016E

Judge: George J. Silver

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**SUPREME COURT OF THE STATE OF NEW YORK —BRONX COUNTY
PRESENT: GEORGE J. SILVER**

Justice

JAQUANE MURRAY,

Plaintiff,

INDEX NO. 28324/2016E

- v -

MOTION DATE
MOTION SEQ. NO.

**SANKALP SEHGAL and "JOHN DOE"
(first and last name is unknown to plaintiff
and said fictitious name is intended to designate
the operator of defendant's motor vehicle on
December 18, 2013 at approximately 3:45 p.m.
at or about the intersection of Madison Avenue
116 Street, New York, New York,**

Defendants.

CARL JAMES,

Third-party Plaintiff,

INDEX NO. 303914/2016

- v -

MOTION DATE

**JAQUANE MURRAY, ERNESTO MURRAY,
SANKALP SEHGAL and "JOHN DOE"
(first and last name is unknown to plaintiff and
said fictitious name is intended to designate the
operator of defendant's motor vehicle on December
18, 2013 at approximately 3:45 p.m. at or about the
intersection of Madison Avenue 116 Street,
New York, New York,**

Third-party Defendants.

Cross-Motion: Yes No

Defendant SANKALP SEHGAL ("defendant-Sehgal") moves, pursuant to CPLR § 3126, to dismiss the complaint, or alternatively, to preclude plaintiff-Jaquane Murray and plaintiff-Carl James from testifying based on their failure to comply with discovery demands and court orders. Defendants JAQUANE MURRAY and ERNESTO MURRAY ("defendants") separately move for

an order, pursuant to CPLR §§ 3124 and 3126, to dismiss both complaints based on plaintiff-Jaquane Murray and plaintiff-Carl James' failure to produce discovery and comply with court orders. Neither plaintiff has opposed the motions.

BACKGROUND

The first action was commenced with the filing of plaintiff-Jaquane Murray's Summons and Complaint on November 20, 2016. The second action was commenced with the filing of plaintiff-Carl James' Summons and Complaint on December 12, 2016. Defendants in the first action filed an Answer on April 12, 2017, and defendants in the second action filed an Answer on April 13, 2017.

On July 19, 2017, a preliminary conference was held in the first action. Plaintiff-Jaquane Murray failed to appear. The conference was thereafter adjourned to February 28, 2018, April 25, 2018, and May 8, 2018. Plaintiff-Jaquane Murray failed to appear on each of those dates.

On July 26, 2017, a preliminary conference was held in the second action. Plaintiff-Carl James failed to appear. The conference was thereafter adjourned to October 18, 2017 and November 20, 2017. Plaintiff-Carl James failed to appear on each of those dates.

On August 9, 2017, the court granted plaintiff's counsel's application to be relieved as counsel for plaintiff-Jaquane Murray. On October 25, 2017, the court issued an order consolidating the two actions for a joint trial. On March 6, 2018, the court granted plaintiff's counsel's motion to be relieved as counsel for plaintiff-Carl James based on "plaintiff not being able to be reached after numerous attempts."

Defendant-Sehgal requests that the complaints be dismissed due to both plaintiffs' failure to comply with court orders. Specifically, defendant-Sehgal points out that neither plaintiff has

appeared for a preliminary conference, provided a bill of particulars, or appeared for depositions. Defendant-Sehgal also asserts that he cannot adequately defend the matter without knowing the injuries that plaintiffs allege.

Defendants join in defendant-Sehgal's motion to dismiss the complaints, and further add that plaintiffs have not provided a bill of particulars or complied with the preliminary conference order. Defendants also note that the attorneys for both plaintiffs were relieved as counsel, and that neither plaintiff has taken any steps to resume prosecution of this matter.

DISCUSSION

CPLR § 3124 allows a party to compel disclosure when a person has failed to comply with a request, notice, interrogatory, demand, question or order. CPLR § 3126 gives courts the discretion to impose penalties upon parties who willfully fail to disclose information which the court orders to be disclosed. A court may appropriately dismiss the complaint "where a plaintiff repeatedly and willfully disobeys court orders for discovery" (*Sosa v. Tudor Place Assocs., Ltd. P'ship*, 55 A.D.3d 311, 311 [1st Dept. 2008]). "Where a party disobeys a court order and by his or her conduct frustrates the disclosure scheme provided by the CPLR, dismissal of a pleading is within the broad discretion of the trial court" (*Ranfort v. Peak Tours, Inc.*, 250 A.D.2d 747, 747 [1st Dept. 1998]).

Here, plaintiff-Jaquane Murray and plaintiff-Carl James' failure to appear to multiple court conferences, failure to provide a bill of particulars, and failure to enter into a discovery order are indicative of their willful and contumacious conduct (*id.* [dismissing complaint where plaintiffs' failure to provide a reasonable excuse for failing to timely comply with preliminary conference order and failing to appear at three court conferences indicates willful and contumacious conduct]);

FILED: BRONX COUNTY CLERK 10/30/2018 02:19 PM

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RECEIVED NYSCEF: 10/30/2018

Yin Kuen Chan Tang v. Hong Kong Chinese Herbal Co., 235 A.D.2d 282, 282 [1st Dept. 1997] [striking pleading for failure to appear at court conference]). Moreover, plaintiff-Jaquane Murray and plaintiff-Carl James have failed to oppose defendants' motion to dismiss the complaint, and failed to proffer any excuse, let alone a reasonable one, for their pattern of noncompliance with court dates and discovery demands (*Jones v. Green*, 34 A.D.3d 260, 261 [1st Dept. 2006] [dismissing complaint due to "plaintiffs' long continued pattern of noncompliance with court orders and discovery demands (CPLR [§] 3126), which gave rise to an inference of willful and contumacious conduct" [citations omitted]; *Ranfort*, 250 A.D.2d at 747, *supra* ["The absence of an excuse for the delay in responding to discovery demands, and the delaying party's failure to object to the demands, supports an inference that the failure to comply was willful."]). Accordingly, the complaints must be dismissed.

Consequently, it is hereby


ORDERED that the complaints of plaintiff-Jaquane Murray and plaintiff-Carl James are dismissed pursuant to CPLR §§ 3124 and 3126; and it is further

ORDERED that defendants are directed to serve a copy of this order upon all parties with notice of entry within 30 days of this order; and it is further

ORDERED that upon proof of service of a copy of this order with notice of entry upon all parties, the clerk is directed to enter judgment dismissing the respective complaints in their entirety.

This constitutes the decision and order of the court.

Dated: October 29, 2018



HON. GEORGE J. SILVER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION