

<b>Borremans v JG Worldwide LLC</b>
2019 NY Slip Op 31772(U)
June 14, 2019
Supreme Court, New York County
Docket Number: 653677/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT HON. ANDREA MASLEY PART IAS MOTION 48EFM Justice

INDEX NO. 653677/2018

MARC BORREMANS, Plaintiff,

MOTION DATE

- v -

MOTION SEQ. NO. 003

JG WORLDWIDE LLC, BIA LLC, and JAMES SALEH, Defendant.

DECISION + ORDER ON MOTION

Masley, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 87

were read on this motion to/for SANCTIONS

Plaintiff Marc Borremans together with defendants JG Worldwide LLC (JG), BIA LLC (BIA) and James Saleh entered into a purchase agreement, dated July 3, 2017, under which Borremans sold all of his interest in BIA to JG for an aggregate purchase price of \$1,175,000. (NYSCEF Doc. No. (Doc.) 3.) As part of the purchase agreement, Borremans agreed to leave open three of his credit cards through February 2018 because he previously used those cards to pay BIA's business expenses. (Doc. 2 at ¶ 4.) JG allegedly incurred \$500,000 in unpaid charges, fees, penalties, and interest on those credit cards, and failed to pay off the balance. (Id. at ¶ 5.) As a result, Borreman's credit score plunged 200 points. (Id. at ¶ 87.) Borremans subsequently commenced this action, alleging that JG and BIA breached the purchase agreement (Doc. 2 at ¶ 168) and that JG, BIA, and Saleh fraudulently conveyed certain funds as a means of preventing BIA from satisfying its debts to Borremans. (id. at ¶ 177.) Because

Borremans' credit score remains entwined with the resolution of this action, the court set expedited discovery deadlines at the preliminary conference held on August 30, 2018. (Doc. 49.) The court directed all parties to serve demands for discovery and inspection by September 28, 2018, and to serve responses in accordance with the CPLR. (*Id.*) The court ordered that all party depositions be completed by January 31, 2019, all expert discovery be completed by March 28, 2019, and that plaintiff file the note of issue on or before March 29, 2019. (*Id.*)

At the first compliance conference on October 21, 2018, the court directed all parties to complete document production by December 4, 2018. (Doc. 54.) However, at the second compliance conference held on January 3, 2019, the parties informed the court that defendants violated the October 21, 2018 order by failing to produce all document discovery by December 4, 2018. (Doc. 57.) Moreover, Borremans' counsel informed the court that Borremans' credit score had plunged further. (*Id.*) Whilst urging defendants to comply with their obligations, the court nevertheless directed defendants to produce all document discovery by February 4, 2019, the day before Borremans' scheduled deposition. (*Id.*)

At the third compliance conference held on February 21, 2019, the parties informed the court that defendants violated the January 3, 2019 order by failing to produce all document discovery by February 4, 2019. (Doc. 64 ["[D]efendants failed to produce all document discovery ... pursuant to the 1/3/19 order".]) Borremans' counsel noted that such delay was adversely affecting Borremans' credit score. Again, the court urged defendants to comply with their obligations, and directed that defendants produce all outstanding documents by February 26, 2019 with an affidavit in accordance with *Jackson v City of New York* (185 AD2d 768 [1st Dept 1992]).

At the fourth compliance conference held on March 7, 2019, the parties informed the court that defendants violated the February 21, 2018 order by failing to produce all document discovery by February 26, 2019. (Doc. 68.) Indeed, much of the outstanding discovery had been requested by Borremans on August 30, 2018. (*Id.*) The court, nevertheless, directed that defendants produce the outstanding discovery by March 12, 2019, with the exception of certain emails to be produced by March 5, 2019. (*Id.*) However, at this conference, the duration of which lasted for two hours, the court painstakingly delineated each and every outstanding item of discovery in a three-page order to insure compliance. (*Id.* ["This conference took 2 hours. Parties are on notice that if this order is not timely complied with, the court will appoint a special referee ..."].) The court further admonished defendants, noting that the court would entertain motion practice if noncompliance ensued.

On March 15, 2019, Borremans's counsel informed the court that defendants violated the March 7, 2019 order by failing to produce the outstanding text messages. Here, in motion sequence number 003, Borremans moves pursuant to CPLR 3126 to sanction defendants JG, BIA and Saleh in the amount of \$51,035.85 representing attorneys' fees incurred in addressing the foregoing discovery issues, and to compel the defendants to produce outstanding discovery in accordance with this court's prior orders and Borremans' Request for Production dated August 30, 2018. (Doc. 72.) Borremans' counsel affirms that Borremans' credit score has now plunged approximately 350 points. (Doc. 48 at ¶ 8.) He asserts that the defendants made a concerted effort to delay these proceedings in an attempt to further damage his financial stability. (*Id.* at ¶ 7.) Defendants oppose.

“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.” (*Fish & Richardson, P.C. v Schindler*, 75 AD3d 219, 220 [1st Dept 2010] [internal quotation marks and citation omitted].) Indeed, “a party that permits discovery to ‘trickle in with a cavalier attitude should not escape adverse consequence.” (*Henderson-Jones v City of New York*, 87 AD3d 498, 504 [1st Dept 2011][citation omitted].) Accordingly, “CPLR 3126 provides various sanctions for violations of discovery orders, the most serious of which are striking a party’s pleadings or outright dismissal of the action.” (*Corner Realty 30/7, v Bernstein Mgt. Corp.*, 249 AD2d 191, 193 [1st Dept 1998][citations omitted].) “The nature of the sanction for disobedience regarding court-ordered disclosure generally lies within the discretion of the IAS court.” (*Sheryll v United Gen. Constr.*, 95 AD3d 780, 781 [1st Dept 2012][citation omitted].) “Any sanction levied by a court must be proportionate to the conduct at issue” *Young v City of New York* (104 AD3d 452, 454 [1st Dept 2013] [citation omitted]), and deterrence is an appropriate factor to consider. (*Sheryll*, 95 AD3d at 781.)

Here, defendants have violated three successive court orders to produce discovery, and delayed the speedy resolution of this action at great personal cost to the plaintiff. Aside from defendants’ callous disregard for this court’s time and orders, what is particularly egregious is defendants’ use of dilatory tactics to ruin Borremans’ credit score. While defendants have attempted to hamper the fair adjudication of this matter, Borremans’ credit score has continued to plummet. Thus, in light of this egregious conduct, sanctions in the form of paying Borremans’ attorneys’ fees incurred to resolve these discovery disputes is appropriate here. The court notes that defendants only

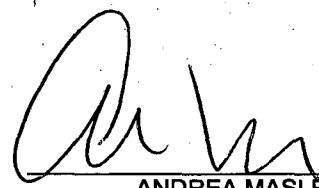
produced the outstanding discovery once this motion was filed, and therefore,

Borremans' request to compel the production is moot.

It is hereby,

ORDERED that defendants JG Worldwide LLC, BIA LLC and James Saleh are sanctioned in the form of paying \$51,035.85 to plaintiff Marc Borremans within 10 days of the order's entry of NYSCEF.

6/14/19  
DATE

  
ANDREA MASLEY, J.S.C.

**HON. ANDREA MASLEY**

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE