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| Goodman v Charles H. Greenthal Mgt. Corp. |
| 2021 NY Slip Op 31335(U) |
| April 21, 2021 |
| Supreme Court, New York County |
| Docket Number: 151808/2016 |
| Judge: Carol R. Edmead |
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| This opinion is uncorrected and not selected for official publication. |

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

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DONNA GOODMAN,

Plaintiff,

- v -

CHARLES H. GREENTHAL MANAGEMENT CORP., 411 EAST 53RD CONDOMINIUM CORP., HEDIA BELHADJ EL-GHOUAYEL, THE STACY WEST CLARK 2012 TRUST, STACY WEST CLARK AS TRUSTEE OF THE STACY WEST CLARK 2012 TRUST, JOYCE WEST AS TRUSTEE OF THE STACY WEST CLARK 2012 TRUST, BARRY H. MANDEL AS TRUSTEE OF THE STACY WEST CLARK 2012 TRUST, THE JANE A. WEST 2012 TRUST, JANE A. WEST AS TRUSTEE OF THE JANE A. WEST 2012 TRUST, JOYCE WEST AS TRUSTEE OF THE JANE A. WEST 2012 TRUST, BARRY H. MANDEL AS TRUSTEE OF THE JANE A. WEST 2012 TRUST,

Defendant.

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CHARLES H. GREENTHAL MANAGEMENT CORP., 411 EAST 53RD CONDOMINIUM CORP.

Plaintiff,

-against-

HEIDI EL-GHOUAYEL

Defendant.

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DECISION + ORDER ON MOTION

Third-Party
Index No. 595176/2018

The following e-filed documents, listed by NYSCEF document number (Motion 007) 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165

were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents, it is

ORDERED that the application of Defendants Charles H. Greenthal Management Corp. and The 411 East 53rd Street Condominium Corp. s/h/a 411 East 53rd Street Condominium Corp

(collectively, “the Greenthal Defendants”) pursuant to CPLR 3126 for an order striking the complaint of Plaintiff Donna Goodman (Motion Seq. 007) is granted; and it is further

ORDERED that the application of the Greenthal Defendants for an award of costs and attorney’s fees (Motion Seq. 007) is denied; and it is further

ORDERED that the cross-motion of Defendants the Stacy West Clark 2012 Trust, Stacy West Clark as Trustee of the Stacy West Clark 2012 Trust, Joyce West as Trustee of the Stacy West Clark 2012 Trust, Barry H. Mandel as Trustee of the Stacy West Clark 2012 Trust, the Jane A. West 2012 Trust, Jane A. West as Trustee of the Jane A. West 2012 Trust, and Barry H. Mandel as Trustee of the Jane A. West 2012 Trust (collectively, “the West Defendants”) pursuant to CPLR 3126 for an order dismissing Plaintiff’s complaint is granted; and it is further

ORDERED that the cross motion of Third-Party Defendant Heida Belhadj El-Ghouayel is granted as the Third-Party Complaint is dismissed as moot; and it is further

ORDEERD that this matter is dismissed with prejudice; and it is further

ORDERED that counsel for the Greenthal Defendants shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.

MEMORANDUM DECISION

In this personal injury action, Defendants Charles H. Greenthal Management Corp. and The 411 East 53rd Street Condominium Corp. s/h/a 411 East 53rd Street Condominium Corp (collectively, “the Greenthal Defendants”) move pursuant to CPLR 3126 for an order striking the complaint of Plaintiff Donna Goodman and granting costs, attorney’s fees, disbursements, and legal expenses to the Greenthal Defendants.

Defendants the Stacy West Clark 2012 Trust, Stacy West Clark as Trustee of the Stacy West Clark 2012 Trust, Joyce West as Trustee of the Stacy West Clark 2012 Trust, Barry H. Mandel as Trustee of the Stacy West Clark 2012 Trust, the Jane A. West 2012 Trust, Jane A. West as Trustee of the Jane A. West 2012 Trust, and Barry H. Mandel as Trustee of the Jane A. West 2012 Trust (collectively, “the West Defendants”) cross-move pursuant to CPLR 3126 for an order dismissing Plaintiff’s complaint.

Third-Party Defendant Heida Belhadj El-Ghouayel also cross-moves pursuant to CPLR 3126 for an order striking Plaintiff’s complaint and hence, the Third-Party Complaint.

Both the motion and the cross-motions are unopposed by Plaintiff.

BACKGROUND AND PROCEDURAL HISTORY

This motion arises out of a personal injury action wherein Plaintiff alleges that on February 3, 2014, the bathroom ceiling in unit #9E in a residential building located at 411 East 53rd Street in Manhattan (“the subject premises”) fell upon her. At the time of the alleged incident, unit #9E was owned by the West Defendants, and the West Defendants were renting the unit to Plaintiff. The Greenthal Defendants own and manage the subject premises, and Third-Party Defendant is the owner of apartment unit #10E, which is located directly above #9E (NYSCEF doc No. 141, ¶ 3).

On March 3, 2016, Plaintiff commenced this proceeding through the service of a Summons and Complaint. The Greenthal Defendants joined issue through service of their Answer on April 22, 2016, and the West Defendants did the same on May 5, 2016 (*id.* at ¶ 4).¹

On June 30, 2016, Plaintiff's first counsel moved by Order to Show Cause to withdraw as counsel on the ground that "irreconcilable differences have arisen between plaintiff and the firm," making it "unreasonably difficult" to effectively carry out their representation (NYSCEF doc No. 10 at 3). This Court granted Plaintiff's counsel's application on July 26, 2016 (*id.* at ¶ 6).

On October 6, 2016, the Court held a preliminary conference at which new counsel for Plaintiff did not appear, nor did Plaintiff appear on her own behalf. Accordingly, this Court issued an order dismissing the complaint (*id.* at ¶ 7). Plaintiff eventually retained new counsel, and this Court restored this matter to active status on July 25, 2017 (*id.*). The Court held a preliminary conference the same day and issued an order directing Plaintiff to provide medical authorizations by August 24, 2017 (*id.* at ¶ 8).

On November 8, 2017, the Greenthal and West Defendants filed a motion and cross-motion to dismiss this action after Plaintiff failed to comply with the preliminary conference order. The motion and cross-motion were withdrawn on January 29, 2018 after Plaintiff agreed to provide the outstanding authorizations (*id.* at ¶ 9). Plaintiff provided the authorizations on April 19, 2018. However, the authorizations were missing information such as Plaintiff's address and social security number, and were limited to the date of the accident, and were thus rejected by Plaintiff's medical providers (*id.* at ¶ 10).

¹ The Greenthal Defendants later commenced their Third-Party action on March 5, 2018 (*id.* at ¶ 5).

Notwithstanding the issues with the authorizations, the parties moved forward with Plaintiff's deposition, which was scheduled for May 29, 2019. The deposition commenced as scheduled but was not completed (*id.*).

On June 17, 2019, the Greenthal Defendants served a post deposition demand for authorizations, and the West Defendants requested further authorizations on September 17, 2019. Plaintiff responded to these demands, but the authorizations again did not include all required information (*id.* at ¶ 12).

On July 22, 2020, Plaintiff's second counsel moved by Order to Show Cause to withdraw as counsel. In support of the motion, Plaintiff's second counsel affirmed that "irreconcilable differences" had developed with Plaintiff, rendering continued representation "untenable" (NYSCEF doc No. 109 at 2).

On September 18, 2020, the parties appeared for a conference before this Court, wherein the application of Plaintiff's second counsel was granted (NYSCEF doc No. 113). At the same conference, this Court addressed remaining outstanding discovery and scheduled Plaintiff's continued deposition. The Court also directed Plaintiff to provide defense counsel with her email address and advise counsel whether she would proceed pro se or retain new counsel (*id.*).

Plaintiff provided her email address and advised counsel she would proceed pro se (NYSCEF doc No. 141, ¶ 14). On October 28, 2020, Plaintiff appeared for her continued deposition. During the continued deposition, Plaintiff referred for the first time to additional treatment she received in Florida, Westchester County, Nassau County, and elsewhere (NYSCEF doc No. 158 at 228). Plaintiff also testified to prior treatment for injuries to the same parts of her body allegedly injured in this matter. Counsel for the Greenthal and West Defendants informed Plaintiff that they would be requesting authorizations for all prior unknown medical providers

and for pre-existing conditions related to the injuries alleged in this matter and advised that they may have to seek the Court's involvement should Plaintiff continue to not fully comply (*id.* at 252-53). Plaintiff responded by threatening to have defense counsel barred from practicing law ("I'm not giving [authorizations] – I don't care. [If the Court] throws this out, not one of you will practice again. I promise you that I know enough people in politics to make sure that happens") (*id.* at 259-260, l: 25, 1-5).

Later that day, counsel for the Greenthal Defendants emailed Plaintiff to advise that all defense counselors conferred and would be requesting authorizations for medical providers not previously mentioned and for prior treatment for injuries alleged in this action (NYSCEF doc No. 141, ¶ 15).

On October 29, 2020, counsel for the West Defendants emailed the parties to suggest that counsel could provide Plaintiff with a blank HIPPA compliant authorization to streamline the authorization process, to which Plaintiff responded agreeably (NYSCEF doc No. 519). Later that day, counsel for the West Defendants emailed all parties to explain that it would actually be simpler to have Plaintiff sign pre-filled authorizations provided by defense counsel rather than make copies of a blank authorization but offered to still provide a blank authorization if preferable to Plaintiff (*id.*).

On November 6, 2020, counsel for the Greenthal Defendants emailed Plaintiff the filled in authorizations and requested that Plaintiff sign and notarize the same (NYSCEF doc No. 160). Counsel received no response and sent a follow-up request on November 12 (NYSCEF doc No. 161).

On December 2, 2020, counsel for the Greenthal Defendants emailed the Court with all parties copied to advise on the status of discovery, including the lack of a response to the demand

for authorizations (NYSCEF doc No. 162). Plaintiff responded and claimed she did not receive the filled in authorizations, so the Greenthal Defendants re-sent them to Plaintiff's email address with the Court copied (NYSCEF doc No. 163).

On December 3, 2020, the Court directed the parties to appear for a discovery conference to discuss the issue of the outstanding authorizations on December 8 (NYSCEF doc No. 141 at ¶ 19). The Court sent out a Microsoft Teams invite for the conference, to which Plaintiff responded privately to the Court via email stating "I did not receive the authorizations nor was I informed of any future meetings. I am [unavailable] most periods" (NYSCEF doc No. 164). The Court forwarded Plaintiff's email to all parties and directed them to confer and provide the Court with alternate dates (*id.*). The Court received no future correspondence regarding the conference. The Greenthal Defendants contend that Plaintiff did not respond to defense counsels' follow-up email requesting alternative dates, and instead left two voicemails with counsel wherein she indicated she would not appear for any conferences (NYSCEF doc No. 118, ¶ 19).

On December 7, 2020, the Greenthal Defendants commenced the instant motion, seeking an order pursuant to CPLR 3126 striking Plaintiff's complaint based on her history of non-compliance, as well as an award of costs, attorney's fees, disbursements and legal expenses incurred in connection with this action.

On December 22, 2020, Third-Party Defendant Heida Belhadj El-Ghouayel cross-moved pursuant to CPLR 3126 for an order striking Plaintiff's complaint and hence, a dismissal of the Third-Party complaint as moot. Third-Party Defendant's cross-motion adopted all arguments advanced in the main motion (NYSCEF doc No. 138, ¶ 5).

On December 24, 2020, the West Defendants cross-moved pursuant to CPLR 3126 for an order dismissing Plaintiff's complaint for failure to respond to the West Defendant's demand for authorizations.

On January 4, 2021, this Court issued an interim scheduling order wherein it outlined dates for Plaintiff to file opposition to the motion and each of the cross-motions, as well as dates for the moving defendants to file replies, and held that this motion would be deemed fully submitted on February 8, 2021 (NYSCEF doc No. 165). Plaintiff did not file opposition to the motion or cross-motions.

Accordingly, the Court emailed all parties on April 12, 2021, to advise that the motion and cross-motions would be resolved by written decision based on the initial submissions.

DISCUSSION

Pursuant to CPLR 3126,

“If a party [. . .] refuses to obey an order for disclosure or willfully 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: [. . .] an order [. . .] dismissing the action.”

It is well-settled that a court may strike a pleading where a party exhibits “repeated, willful and contumacious refusals” to comply with court orders and directives over an extended period of time (*Harris v Kay*, 168 AD3d 419 [1st Dept 2019]). Willful and contumacious conduct “may be inferred from a party’s repeated failure to comply with court-ordered discovery, coupled with inadequate explanations for the failures to comply” (*DiDomenico v C & S Aeromatik Supplies, Inc.*, 682 NYS2d 452, 459 [1st Dept. 1998]; *Frias v Fortini*, 658 NYS2d 435, 436 [1st Dept 1997]).

In a recent case, *Cooper v Metropolitan Transportation Authority et al.*, this Court granted plaintiff’s motion to strike defendants’ answer after defendants violated seven orders

over the course of three years requiring the deposition of their witness to be held and offered no excuse for their repeated failure to comply (2020 WL 4207347, at *3 [NY Sup. Ct. July 22, 2020]. The Appellate Division, First Department affirmed this Court’s decision, noting that “such pattern of noncompliance gave rise to an inference of willful and contumacious conduct” (186 AD3d 1150, 1150-51 [1st Dept 2020], citing *Rodriguez v United Bronx Parents, Inc.*, 70 AD3d 492 [1st Dept 2010]; *Reidel v Ryder TRS, Inc.*, 13 AD3d 170 [1st Dept 2004]).

Here, as detailed in the Procedural History, there is here an extensive history of non-complaint behavior on the part of Plaintiff, including, *inter alia*, her refusal to provide authorizations for medical providers, failure to remedy prior defective authorizations, and failure to comply with various orders and appearances scheduled by this Court. The evidentiary record also reflects that Plaintiff’s conduct at times has crossed the line from contumacious to openly hostile, such as when she threatened to take retaliatory action to prevent defense counsel from practicing law should she receive an unfavorable ruling from this Court. As Plaintiff has repeatedly willfully failed to cooperate with her adversaries and has openly defied Court orders, this Court finds that the moving defendants have sufficiently established that Plaintiff’s complaint must be stricken pursuant to CPLR 3126.

The Court, however, declines to grant the Greenthal Defendants’ application for an award of costs and attorney’s fees incurred in connection with this matter. The Court finds that the dismissal of Plaintiff’s complaint in and of itself is a sufficient consequence for her non-compliance, and the Greenthal Defendants have not advanced any arguments demonstrating why they are entitled to additional sanctions.

Accordingly, Plaintiff's complaint is stricken, and this proceeding is dismissed with prejudice.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the application of Defendants Charles H. Greenthal Management Corp. and The 411 East 53rd Street Condominium Corp. s/h/a 411 East 53rd Street Condominium Corp (collectively, "the Greenthal Defendants") pursuant to CPLR 3126 for an order striking the complaint of Plaintiff Donna Goodman (Motion Seq. 007) is granted; and it is further

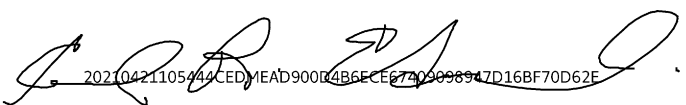
ORDERED that the application of the Greenthal Defendants for an award of costs and attorney's fees (Motion Seq. 007) is denied; and it is further

ORDERED that the cross-motion of Defendants the Stacy West Clark 2012 Trust, Stacy West Clark as Trustee of the Stacy West Clark 2012 Trust, Joyce West as Trustee of the Stacy West Clark 2012 Trust, Barry H. Mandel as Trustee of the Stacy West Clark 2012 Trust, the Jane A. West 2012 Trust, Jane A. West as Trustee of the Jane A. West 2012 Trust, and Barry H. Mandel as Trustee of the Jane A. West 2012 Trust (collectively, "the West Defendants") pursuant to CPLR 3126 for an order dismissing Plaintiff's complaint is granted; and it is further

ORDERED that the cross motion of Third-Party Defendant Heida Belhadj El-Ghouayel is granted as the Third-Party Complaint is dismissed as moot; and it is further

ORDEERD that this matter is dismissed with prejudice; and it is further

ORDERED that counsel for the Greenthal Defendants shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.


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| <u>4/21/2021</u> DATE | | | | | <u>CAROL R. EDMEAD, J.S.C.</u> |
| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | | <input type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> | OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | | | <input type="checkbox"/> | REFERENCE |