

Segura v Pier 59 Studios LP

2023 NY Slip Op 31495(U)

May 2, 2023

Supreme Court, New York County

Docket Number: Index No. 151256/2021

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART **12**

Justice

-----X

BRIGITTE SEGURA,

Plaintiff,

- v -

PIER 59 STUDIOS LP, PIER 59 STUDIOS LLC, FEDERICO
PIGNATELLI DELLA LEONESSA, CHELSEA PIERS LP,
ART AND FASHION GROUP CORPORATION, JOHN
DOES 1-20, ROE CORPORATIONS 1-20

Defendant.

-----X

INDEX NO. 151256/2021
MOTION DATE 08/18/2023
MOTION SEQ. NO. 002

**AMENDED
DECISION + ORDER
ON MOTION¹**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 58

were read on this motion to/for

SANCTIONS

The instant motion arises out of an action to recover for personal injuries sustained by plaintiff Brigitte Segura (plaintiff) when she was allegedly caused to hit her head on the corner of a bar during an event at Pier 59 Studios in New York, New York. Plaintiff moves for an order pursuant to CPLR 3126, sanctioning defendants Pier 59 Studios LP, Pier 59 Studios LLC, Federico Pignatelli Della Leonessa, Chelsea Piers LP, and Art and Fashion Group Corporation (collectively, defendants) for their alleged failure to comply with discovery obligations. Oral arguments were held on April 18, 2023.

Specifically, plaintiff seeks an order striking defendants' answers pursuant to CPLR 3126 (3), deeming that the issues for which discovery is sought are resolved in accordance with plaintiff's claims pursuant to CPLR 3126 (1), and awarding plaintiff attorney's fees and/or imposing monetary sanctions pursuant to CPLR 3126 and 22 NYCRR § 130-1.1. Defendants have

¹ The decision is amended to include pages 5 and 6, which were inadvertently omitted due to a clerical error.

not submitted opposition, but filed a letter to the Court on September 1, 2022, requesting that it serve as their response to plaintiff's correspondence to the Court filed on August 31, 2022.

I. Procedural History

Plaintiff commenced the instant action by filing a summons and complaint on February 5, 2021. All defendants except Chelsea Piers LP filed their answers on April 6, 2021. Chelsea Piers LP filed its answer on July 29, 2021. On December 26, 2021, plaintiff filed a request for judicial intervention, seeking a preliminary conference. On February 2, 2022, plaintiff filed motion sequence number 001, which sought an order compelling defendants to comply with plaintiff's discovery demands or, alternatively, striking defendants' answers based upon their alleged willful noncompliance with discovery and awarding plaintiff the costs of filing the motion. Defendants filed their opposition to said motion on February 10, 2022, attaching as an exhibit their initial responses, dated February 3, 2022.² *See* NYSCEF doc. no. 39. Defendants' initial responses object to plaintiff's demands as vague, overbroad, ambiguous, repetitive, unduly burdensome, beyond the scope of discovery, and/or seeking privileged materials.

On June 7, 2022, Justice Barbara Jaffe issued a decision and order on motion sequence number 001, directing defendants to provide plaintiff with supplemental responses to her discovery demands within 30 days of the order, subject only to objections that the demands are palpably improper or seek privileged information. *See* NYSCEF doc. no. 42. The order further directed the parties to either enter into a stipulation encompassing their preliminary conference on or before July 13, 2022 or appear for a preliminary conference in person or virtually on that same day. *See*

² This initial discovery response from defendants is not currently filed as its own document but, rather, is only uploaded to NYSCEF as an exhibit to defendants' opposition to plaintiff's motion sequence number 001. Therefore, the Court is unable to determine if this initial response was served on February 3, 2022 or some later date. Additionally, there is no affidavit of service currently filed on NYSCEF in regard to this initial discovery response. There are several NYSCEF documents listed as "deleted: filing error."

id. Justice Jaffe declined to impose the requested sanctions on defendants, given plaintiff's failure to demonstrate willful and contumacious conduct by defendants. *See id.*

An affidavit of service indicates that defendants served plaintiff's counsel with their supplemental responses on May 31, 2022. *See* Affidavit of Service, NYSCEF doc. no. 47 at 139. However, plaintiff's counsel informed defendants' counsel via email on June 30, 2022 that he did not receive the supplemental responses and that the address of service listed on the affidavit of service is incorrect, noting that his current address is listed on all of his filings in this case. *See* NYSCEF doc. no. 48. Defense counsel then sent the supplemental responses to plaintiff's counsel via email on the same day. *See id.* On July 1, 2022, plaintiff's counsel requested a privilege log from defendants' counsel in relation to the supplemental responses, but this request was not ordered by the Court.

On July 27, 2022, plaintiff filed the instant motion, returnable August 17, 2022, seeking an order imposing sanctions upon defendants for their alleged failures to comply with discovery obligations pursuant to CPLR 3126 and Judge Jaffe's June 7, 2022 order. Plaintiff requests that the Court grant the relief requested in the instant motion, striking defendants' pleadings, determining that defendants are liable for plaintiff's injuries, setting the matter down for an inquest to establish plaintiff's damages, and awarding her fees and expenses in relation to motion sequence numbers 001 and 002.

On August 31, 2022, plaintiff's counsel filed a letter to the Court, requesting that the Court grant plaintiff's motion on default because defendants failed to submit opposition papers by the August 15, 2022 deadline pursuant to CPLR 2214(b), which requires answering affidavits to be served at least two days before the motion is noticed to be heard. *See* NYSCEF doc. no. 54. Plaintiff claims that defendants did not request an extension of time to file opposition papers and, therefore,

any answering papers filed going forward may not be considered.

On September 1, 2022, defendants' counsel filed a letter to the Court, requesting that the letter serve as their response to plaintiff's August 31, 2022 letter. *See* NYSCEF doc. no. 55. In the letter, defendants' new handling attorney, Amanda J. DeFeo, asserted that she did not submit opposition papers to the instant motion because the matter had been recently re-assigned to her. She stated that she immediately reached out to plaintiff's counsel upon reviewing the case to try to resolve the matter amicably and avoid further court intervention. Ms. DeFeo claimed that she left a voicemail for plaintiff's counsel, in which she suggested that the parties discuss any outstanding discovery issues and continue settlement negotiations, but her call was not returned.

On September 6, 2022, plaintiff's counsel filed another letter to the Court in response to Ms. DeFeo's September 1, 2022 letter, asserting that law office failure is legally and factually insufficient to vacate a default. *See* NYSCEF doc. no. 58. (However, the Court had not granted a default.) Plaintiff's counsel further claimed that Ms. DeFeo could have timely addressed the discovery issues raised in the motion, as she appeared on behalf of defendants on July 12, 2022³, more than two weeks before the motion was filed and a month before it was returnable. Additionally, plaintiff's counsel claims that he sent an email and spoke with Ms. DeFeo over the phone on July 13, 2022 to advise her of the joint communication due to the Court by close of business that day, but she did not get back to him. *See* NYSCEF doc. no. 50. Plaintiff's counsel also points out that he emailed the Court on July 13, 2022, with defense counsel copied, advising defendants and the Court of plaintiff's intention to file the instant motion. *See* NYSCEF doc. no. 51. Plaintiff's counsel acknowledges receiving Ms. DeFeo's voicemail but states that it was after

³ Craig Goldwasser of Pillinger Miller Tarallo, LLP appeared in this case by filing an answer on behalf of defendants on April 6, 2021. The case was later purportedly re-assigned to Ms. DeFeo, who consented to representing defendants on NYSCEF on July 12, 2022, as per the "Case Details" tab.

the deadline for filing opposition had already passed. *See* NYSCEF doc. no. 58.

II. Plaintiff's Motion for Sanctions

Plaintiff first moves for an order striking defendants' pleadings pursuant to CPLR 3126 (3), which provides that the Court may strike a pleading or render a default judgment against a party who refuses to obey an order for disclosure. Such sanctions are warranted when a party's failure to comply with court-ordered discovery is "willful and contumacious," particularly when the court has warned said party of the ramifications of noncompliance. *Shohat v Suky*, 167 AD3d 480 (1st Dept 2018); *Rosengarten v Born*, 161 AD3d 515 (1st Dept 2018).

Here, plaintiff argues that defendants' conduct is willful and contumacious because they failed to comply with the Court's June 7, 2022 order directing them to produce outstanding discovery and offered no explanation for their noncompliance. Plaintiff asserts that defendants only provided their initial discovery response after plaintiff filed her first motion to compel, but that the response relied exclusively on boilerplate objections. Plaintiff asserts that even after the Court's June 7, 2022 order, defendants' supplemental responses again relied on boilerplate objections, withheld substantive material, and failed to provide explanations as to why certain documents were privileged as required by CPLR 3122 (b). However, per the affidavit of service, those supplemental responses were served prior to the Court's order.

Plaintiff further maintains that defendants failed to comply with the Court's order to provide either a joint discovery stipulation or a joint letter to the Court by July 13, 2022. Additionally, plaintiff claims that defendants failed to fulfill their legal obligation to provide insurance information pursuant to CPLR 3101 (f). Plaintiff argues that defendants' conduct is deliberate, noting that defendants mailed their supplemental responses to the wrong address and claiming that defendants refused to email the materials for over a month after that mailing.

However, the email correspondence cited above indicates that defendants emailed their supplemental responses to plaintiff's counsel the same day that he informed them that he did not receive the mailing.

Upon review of the motion, letters to the Court and the NYSCEF documents, the Court finds that defendants did respond to plaintiff's discovery requests and, in so doing, attached over one hundred pages of exhibits to their responses. Defendants object to plaintiff's demands as "overbroad, vague, ambiguous, repetitive, unduly burdensome, beyond the scope of discovery and seeking privileged materials," which are certainly recognized objections. *See* NYSCEF doc. no. 47. When the Court issued its June 7, 2022 order, the responses to which the motion refers had already been made.

To date, there has been no preliminary conference in this matter. Although plaintiff's counsel proposed dates to reschedule the preliminary conference in his July 13, 2022 letter to the Court, no preliminary conference has been held since Justice Jaffe's June 7, 2022 order.⁴ Plaintiff's motion does not seek an order rescheduling the preliminary conference or setting a new deadline for a stipulation. Rather, plaintiff's motion seeks the extreme measure of issuing sanctions against defendants. Justice Jaffe's June 7, 2022 decision does not indicate that sanctions would be imposed should defendants fail to comply with the order.

Although plaintiff's motion is accompanied by an affirmation of good faith and there may still be outstanding discovery owed, it appears that defendants did make attempts to comply with discovery until there were staff changes in counsel's office, which defendants' counsel tried to explain to plaintiff's counsel, but he did not return her call. Nothing in the record here suggests that defendants' conduct was willful and contumacious.

⁴ Justice Jaffe retired in July 2022 and this Court was only recently assigned her inventory, which may have contributed to a delay in scheduling a conference.

As defendants have made some efforts to comply with plaintiff's discovery demands, and as Justice Jaffe did not appear to anticipate or warn of the possibility of sanctions in her order, plaintiff's motion is premature. Although defendants did not file formal opposition papers to plaintiff's motion, the Court itself does not find a basis for granting sanctions at this pre-preliminary conference stage.

Accordingly, it is hereby

ORDERED that plaintiff's motion for sanctions is denied; and it is further

ORDERED that defendants shall serve and file a privilege log to accompany their supplemental discovery responses and provide additional responses with requested discovery or specific reasons for not turning it over; and it is further

ORDERED that the parties are to appear for a preliminary conference on May 9, 2023 at 2:15pm in room 328, 80 Centre Street, New York, New York; and it is further

ORDERED that, should either side fail to appear for the preliminary conference, the Court may impose sanctions upon a motion for same by either party.

This constitutes the decision and order of the Court.

5/2/2023

DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE