

Haynie v Icer of 537 Lenox Ave. LLC

2023 NY Slip Op 33096(U)

September 7, 2023

Supreme Court, New York County

Docket Number: Index No. 152009/2020

Judge: Sabrina Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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MARIBETH HAYNIE

Plaintiff,

- v -

ICER OF 537 LENOX AVE LLC,

Defendant.

INDEX NO. 152009/2020

MOTION DATE 09/07/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for DISMISSAL.

Plaintiff commenced this action seeking damages for personal injuries sustained on February 24, 2017, when she alleges, she tripped and fell on the sidewalk abutting the premises located at 573 Lenox Avenue, New York, New York.

On June 18, 2020, Defendants appeared by counsel and filed an answer.

The parties engaged in discovery between March 2021 and March 2023, when defendant moved to compel Plaintiff to provide authorizations to obtain Plaintiff's medical records. The motion was granted to the extent of directing the parties to appear for a conference.

In April 2023, Plaintiff's counsel moved to be relieved, asserting that circumstances beyond their control have made it "impossible" to continue representing Plaintiff. The motion was unopposed by Defendant, and Plaintiff failed to appear or submit papers in opposition. Plaintiff's counsel's motion to be relieved was granted on May 17, 2023.

The court scheduled a status conference on July 6, 2023, however Plaintiff failed to appear. The court mailed Plaintiff a letter adjourning the conference to July 31, 2023 at 2:30 pm. Plaintiff again failed to appear.

On September 6, 2023, Defendant moved, pursuant to CPLR §3042 and §3126, precluding Plaintiff from offering any evidence upon the trial of this action and dismissing her complaint for her failure to furnish defendant with HIPAA compliant authorizations for all medical providers, insurance providers and employers. Plaintiff failed to appear or submit opposition.

CPLR §3042(d) provides, in pertinent part,

If a party served with a demand for a bill of particulars willfully fails to provide particulars which the court finds ought to have been provided pursuant to this rule, the court may make such final or conditional order with regard to the failure or refusal as is just, including such relief as is set forth in section thirty-one hundred twenty-six of this chapter.

CPLR §3126 provides in pertinent part

If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party's control, 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 3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

Defendant has repeatedly demanded from Plaintiff authorizations for medical records in order to proceed with depositions. The court has issued not less than six (6) orders for Plaintiff to respond to Defendants discovery demands. Plaintiff has failed to cooperate with her counsel in providing the necessary and required discovery and has failed to appear in court on the two scheduled conferences after her counsel was relieved.

“Although dismissing a complaint pursuant to CPLR §3126 is a drastic remedy, it is warranted where a party's conduct is shown to be willful, contumacious, or in bad faith.” *Rowell*

v. *Joyce*, 10 A.D.3d 601 [2d Dept. 2004]. “[T]he willful and contumacious character of the plaintiffs' failure to respond to discovery can be inferred from their repeated refusals to comply with the respondents' discovery requests, even after being directed to do so by court order, as well as the absence of any explanation offered to excuse their failures to comply” (*Rowell* citing *Conch Assoc. v. PMCC Mtge. Corp.*, 303 A.D.2d 538, 756 N.Y.S.2d 456).

In the instant action, Plaintiff has failed to provide discovery despite multiple court orders and Defendant's good faith attempts to obtain discovery. Plaintiff's willful disregard of prior court orders is further aggravated by plaintiffs' failure to submit opposition to Defendant's instant application to dismiss the complaint, and failure to appear for two scheduled conferences before the court on July 6, 2023, and July 31, 2023. Therefore, based on Plaintiff's history of non-compliance with both discovery demands and several prior court orders, this action is hereby dismissed.

Wherefore, it is hereby

ORDERED that Plaintiff's complaint is dismissed in its entirety; and it is further


ORDERED that Defendants are directed to serve a copy of this order upon plaintiffs 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 plaintiff, the clerk is directed to enter judgment dismissing the complaint in its entirety; and it is further

ORDERED that, within 20 days from entry of this order, Defendant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

<u>9/7/2023</u> DATE	 _____ SABRINA KRAUS, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED IN PART	
	<input type="checkbox"/> SUBMIT ORDER	