

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Ochoa v. C.I. Lobster Corp.

2026 NY Slip Op 03274 (Supreme Court of the State of New York Appellate Division First Department 2026) ·
No. Index No. 815200/22; Appeal No. 5717; Case No. 2024-06937 · Decided May 26, 2026

SUMMARY

The Appellate Division, First Department reversed an order striking the plaintiff's pleadings under CPLR 3126 and denying reinstatement of the action as moot. Because the trial court had erroneously marked the action disposed and the record did not establish willful or contumacious noncompliance, the court reinstated the action and remanded for a discovery conference and extension of the note of issue deadline.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Kennedy, J.; Mendez, J.; Rodriguez, J.; Michael, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 26, 2026
DOCKET	Index No. 815200/22; Appeal No. 5717; Case No. 2024-06937
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, Bronx County, that granted defendants' CPLR 3126 cross-motion to strike the pleadings and denied plaintiff's motion to reinstate the action and extend the note of issue deadline as moot.
STANDARD OF REVIEW	The Appellate Division reviewed the discovery sanction under the court's discretionary authority and exercised its own discretion to substitute its judgment for that of the trial court, even absent an abuse of discretion.
PRECEDENTIAL VALUE	Published appellate decision; uncorrected and subject to revision before publication in the Official Reports.
PARTIES	Anai Hernandez Ochoa v. C.I. Lobster Corp. doing business as City Island Lobster House, et al.

TOPICS

sanctions

discovery dispute

appellate procedure

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PRACTICE AREAS

New York civil procedure

discovery sanctions

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QUESTIONS PRESENTED

1. Whether striking plaintiff's pleadings under CPLR 3126 was warranted absent a conclusive showing that plaintiff's nondisclosure was willful, contumacious, or in bad faith.
2. Whether the action should be restored to the active calendar and the note of issue deadline extended after the trial court erroneously marked the action disposed.

HOLDINGS

1. The drastic sanction of striking plaintiff's complaint was unwarranted because defendants did not conclusively demonstrate willful, contumacious, or bad-faith nondisclosure, and the court's erroneous disposition of the action contributed to the procedural circumstances.
2. The action should be restored to the active calendar, plaintiff's motion to reinstate and extend the note of issue deadline should be granted, and the matter should be remanded for a discovery conference and scheduling of an extended note of issue deadline.

KEY QUOTATIONS

“the drastic remedy of striking a party's pleading pursuant to CPLR 3126 for failure to comply with a discovery order . . . is appropriate only where the moving party conclusively demonstrates that the non-disclosure was willful, contumacious or due to bad faith” ([*1])

“this Court is vested with its own discretion and corresponding power to substitute its own discretion for that of the trial court, even in the absence of abuse” ([*1])

“strong preference in our law that matters be decided on their merits” ([*2])

FACTUAL BACKGROUND

The trial court's April 18, 2023 scheduling order established discovery deadlines and required plaintiff to file a note of issue by April 13, 2024. After defendants discontinued their cross-claims, the court mistakenly marked the action disposed, and plaintiff later moved to restore the matter and extend the note of issue deadline. Defendants sought dismissal, preclusion, or compelled discovery responses under CPLR 3126, but the record did not show that plaintiff had failed to comply with court orders other than the initial scheduling order.

PROCEDURAL HISTORY

The trial court entered a scheduling order setting discovery deadlines and an April 13, 2024 note of issue deadline. After defendants filed a stipulation discontinuing their cross-claims, the court erroneously marked the action disposed. Plaintiff moved to restore the action and extend the note of issue deadline, while defendants

cross-moved for discovery sanctions under CPLR 3126. Supreme Court granted the cross-motion to strike the pleadings; the Appellate Division reversed, reinstated the action, granted plaintiff's motion, and remanded for a discovery conference and extension of the note of issue deadline.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Restore the action to the active calendar, conduct a discovery conference, and extend the deadline for serving and filing the note of issue.

CASES CITED

- Henderson-Jones v City of New York, 87 AD3d 498, 504 [1st Dept 2011]
- Ellis v Park, 93 AD3d 502, 502-503 [1st Dept 2012]
- Nunez v City of New York, 37 AD3d 434, 434-435 [2d Dept 2007]
- Reyes v City of New York, 239 AD3d 491, 492 [1st Dept 2025]
- Cespedes v Mike & Jac Trucking Corp., 305 AD2d 222, 222 [1st Dept 2003]
- Elizabeth Canal, LLC v Structure Tone Global Servs., Inc., 236 AD3d 582, 583 [1st Dept 2025]
- Those Certain Underwriters at Lloyds, London v Occidental Gems, Inc., 11 NY3d 843, 845 [2008]
- Youwanes v Steinbrech, 193 AD3d 492, 493 [1st Dept 2021]
- Lee v 13th St. Entertainment LLC, 161 AD3d 631, 632 [1st Dept 2018]

OPINION

Ochoa v. C.I. Lobster Corp. 2026 NY Slip Op 03274

PER CURIAM.

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plaintiff's motion to reinstate the action and extend the time to file a note of issue as moot, unanimously reversed, on the law and in the exercise of discretion, defendants' cross-motion denied, and plaintiff's motion to reinstate the action and extend the time to file a note of issue granted, the action reinstated, and the matter remanded for scheduling of a discovery conference and extension of the note of issue deadline, without costs. The court's April 18, 2023 scheduling order set forth specific deadlines for discovery as well as a note of issue deadline of April 13, 2024. On December 13, 2023, defendants filed a stipulation discontinuing their respective cross-claims. In response, the court erroneously marked this action disposed. After the April 13, 2024 note of issue deadline passed, plaintiff moved on July 1, 2024, to have the matter restored and to extend the time to serve and file the note of issue. Defendants then cross-moved under CPLR 3126 for dismissal, preclusion, or compelled responses to its demands. "[T]he drastic remedy of striking a party's pleading pursuant to CPLR 3126 for failure to comply with a discovery order . . . is appropriate only where the moving party conclusively demonstrates that the non-disclosure was willful, contumacious or due to bad faith" (*Henderson-Jones v City of New York* , 87 AD3d 498, 504 [1st Dept 2011] [internal quotation marks omitted]; see *Ellis v Park* , 93 AD3d 502 , 502-503 [1st Dept 2012]). Willful and contumacious conduct may be shown through "failure to comply with court orders, in the absence of adequate excuses" (*Henderson-Jones* , 87 AD3d at 504 ; see *Ellis* , 93 AD3d at 502-503; *Nunez v City of New York* , 37 AD3d 434, 434-435 [2d Dept 2007]). Although "[i]t generally is within the discretion of the motion court to determine the appropriate penalty to be imposed against an offending party" (*Reyes v City of New York* , 239 AD3d 491 , 492 [1st Dept 2025] [internal quotation marks omitted]; see *Cespedes v Mike & Jac Trucking Corp.* , 305 AD2d 222, 222 [1st Dept 2003]), "this Court is vested with its own discretion and corresponding power to substitute its own discretion for that of the trial court, even in the absence of abuse" (*Elizabeth Canal, LLC v Structure Tone Global Servs., Inc.* , 236 AD3d 582 , 583 [1st Dept 2025]; see *Those Certain Underwriters at Lloyds, London v Occidental Gems, Inc.* , 11 NY3d 843, 845 [2008]). [*2] In light of the court's error in marking this action disposed, as well as the absence of plaintiff's failure to comply with any court orders other than the initial scheduling order, the sanction of striking plaintiff's complaint was unwarranted (see *Elizabeth Canal* , 236 AD3d at 583; see also *Youwanes v Steinbrech* , 193 AD3d 492 , 493 [1st Dept 2021] ["strong preference in our law that matters be decided on their merits"]; *Lee v 13th St. Entertainment LLC* , 161 AD3d 631 , 632 [1st Dept 2018]). Accordingly, this matter should be restored to the active calendar and remanded for a discovery conference, and Supreme Court should extend the note of issue deadline upon remand. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 26, 2026

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