

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Peterson v. Credit Agricole Am. Servs., Inc.

Peterson, 2026 NY Slip Op 01078 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2024-06210 · Decided February 25, 2026

SUMMARY

The Appellate Division, Second Department reversed an order vacating a prior order that dismissed the plaintiff's employment-discrimination action against several Credit Agricole entities and imposed monetary sanctions. The court held that the prior order was not entered on default and that there was no basis for vacatur under CPLR 5015(a), in the interest of substantial justice, or upon reargument. It further concluded that the plaintiff's prolonged, deficient, and deceptive discovery conduct supported dismissal under CPLR 3126.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Linda Christopher, J.; Lillian Wan, J.; Janice A. Taylor, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	February 25, 2026
DOCKET	2024-06210
DISPOSITION	reversed
PROCEDURAL POSTURE	The defendants appealed from an order granting the plaintiff's motion under CPLR 5015(a) to vacate a prior order that dismissed the complaint against the corporate defendants under CPLR 3126 and imposed monetary sanctions.
STANDARD OF REVIEW	Whether the Supreme Court had a basis under CPLR 5015(a) or its inherent power to vacate the prior order, and whether the sanction imposed under CPLR 3126 constituted an improvident exercise of discretion.
PRECEDENTIAL VALUE	published

PARTIES

Credit Agricole America Services, Inc., Credit Agricole Structured Asset Management Advisors, LLC, Credit Agricole Securities (USA), Inc., Credit Agricole Leasing (USA) Corp. v. Kelley Peterson

TOPICS

discovery dispute

sanctions

motion for reconsideration

employment discrimination

civil procedure

PRACTICE AREAS

civil procedure

employment law

civil rights

remedies

QUESTIONS PRESENTED

1. Whether the February 1, 2024 order dismissing the complaint against the corporate defendants was entered on default so that it could be vacated under CPLR 5015(a)(1).
2. Whether the Supreme Court could vacate the February 1, 2024 order in the interest of substantial justice based on its inherent power.
3. Whether the Supreme Court could vacate the February 1, 2024 order upon reargument and deny the defendants' CPLR 3126 motion.
4. Whether dismissal and monetary sanctions were justified by the plaintiff's willful and contumacious failure to comply with discovery obligations.

HOLDINGS

1. The order was not entered on default because the plaintiff submitted opposition and the court considered it; therefore, there was no basis to vacate the order under CPLR 5015(a)(1).
2. The Supreme Court lacked a basis to vacate the February 1, 2024 order in the interest of substantial justice because the plaintiff showed no fraud, mistake, inadvertence, surprise, or excusable neglect.
3. Dismissal of the complaint against the corporate defendants and monetary sanctions were justified because the plaintiff's prolonged, deliberate, and inadequately explained discovery violations established willful and contumacious conduct.

KEY QUOTATIONS

*"A court's inherent power to exercise control over its [orders and] judgments is not plenary, and should be resorted to only to relieve a party from [orders or] judgments taken through [fraud,] mistake, inadvertence, surprise or excusable neglect" ([*2])*

*"The nature and degree of the penalty to be imposed [on a motion] pursuant to CPLR 3126 lies within the sound discretion of the Supreme Court" ([*2])*

*"A determination to impose sanctions for conduct which frustrates the disclosure scheme of the CPLR should not be disturbed absent an improvident exercise of discretion" ([*2])*

*“The striking of a pleading may be warranted where the conduct of a party is shown to be willful and contumacious” ([*2])*

FACTUAL BACKGROUND

The plaintiff alleged that her supervisor coerced her into a romantic and sexual relationship, forming the basis for employment-discrimination claims under Executive Law § 296. She repeatedly failed to provide complete responses to interrogatories and discovery demands, despite correspondence and a court order directing production. A forensic examination revealed that she had access to communications and documents she had claimed were unavailable, including material in a Dropbox account, and she also provided only selected diary pages before claiming that the remainder had been stolen. The defendants moved to dismiss under CPLR 3126 and for monetary sanctions, and the Supreme Court granted that motion before later vacating the order.

PROCEDURAL HISTORY

The plaintiff brought an employment-discrimination action alleging hostile work environment and sexual harassment. After the plaintiff repeatedly failed to provide discovery, the Supreme Court ordered production and warned that noncompliance could result in CPLR 3126 sanctions. The court then dismissed the claims against the corporate defendants and imposed monetary sanctions, but later granted the plaintiff's motion to vacate that order. The Appellate Division reversed the vacatur order and denied the plaintiff's CPLR 5015(a) motion.

DISPOSITION

reversed

CASES CITED

- Aurora Loan Servs., LLC v. Dorfman, 170 AD3d 786, 788
- Matter of McKenna v. County of Nassau, Off. of County Attorney, 61 NY2d 739, 742
- Gutierrez v. Hillside Hotel, LLC, 234 AD3d 672, 674
- Amato v. Lord & Taylor, Inc., 10 AD3d 374, 375
- Lucas v. Stam, 147 AD3d 921, 925
- Morgenstern v. Jeffsam Corp., 78 AD3d 913, 914
- Duncan v. Hebb, 47 AD3d 871, 871
- Dokaj v. Ruxton Tower Ltd. Partnership, 91 AD3d 812, 814

OPINION

Peterson v. Credit Agricole Am. Servs., Inc. 2026 NY Slip Op 01078

PER CURIAM.

Peterson v Credit Agricole Am. Servs., Inc. (2026 NY Slip Op 01078) Peterson v Credit Agricole Am. Servs., Inc. 2026 NY Slip Op 01078 Decided on February 25, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official

Reports. Decided on February 25, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department BETSY BARROS, J.P.

LINDA CHRISTOPHER

LILLIAN WAN

JANICE A. TAYLOR, JJ. 2024-06210

(Index No. 506717/22) [*1]Kelley Peterson, respondent, v Credit Agricole America Services, Inc., et al., appellants, et al., defendant. Herbert Smith Freehills NY LLP, New York, NY (Tyler T. Hendry and Barbara M. Roth of counsel), for appellants. Derek Smith Law Group, PLLC, New York, NY (Mark Taylor of counsel), for respondent. DECISION & ORDER In an action, inter alia, to recover damages for employment discrimination on the basis of hostile work environment and sexual harassment in violation of Executive Law § 296, the defendants Credit Agricole America Services, Inc., Credit Agricole Structured Asset Management Advisors, LLC, Credit Agricole Securities (USA), Inc., and Credit Agricole Leasing (USA) Corp. appeal from an order of the Supreme Court, Kings County (Lisa S. Ottley, J.), dated March 25, 2024. The order granted that branch of the plaintiff's motion which was pursuant to CPLR 5015(a) to vacate an order of the same court dated February 1, 2024, granting the motion of the defendants Credit Agricole America Services, Inc., Credit Agricole Structured Asset Management Advisors LLC, Credit Agricole Securities (USA), Inc., and Credit Agricole Leasing (USA) Corp., in effect, pursuant to CPLR 3126, to dismiss the complaint insofar as asserted against them and for monetary sanctions. ORDERED that the order dated March 25, 2024, is reversed, on the law, with costs, and that branch of the plaintiff's motion which was pursuant to CPLR 5015(a) to vacate the order dated February 1, 2024, granting the motion of the defendants Credit Agricole America Services, Inc., Credit Agricole Structured Asset Management Advisors, LLC, Credit Agricole Securities (USA), Inc., and Credit Agricole Leasing (USA) Corp., in effect, pursuant to CPLR 3126, to dismiss the complaint insofar as asserted against them and for monetary sanctions, is denied. In 2022, the plaintiff commenced this action against Credit Agricole America Services, Inc., Credit Agricole Structured Asset Management Advisors, LLC, Credit Agricole Securities (USA), Inc., and Credit Agricole Leasing (USA) Corp. (hereinafter collectively the defendants) and Mickael Abid, inter alia, to recover damages for employment discrimination on the basis of hostile work environment and sexual harassment in violation of Executive Law § 296, alleging that Abid, her supervisor, coerced her into a romantic and sexual relationship. The defendants served their first set of interrogatories and discovery demands in September 2022. The attorneys for the plaintiff and the defendants corresponded over subsequent months regarding the plaintiff's deficient or nonexistent responses, and in March 2023, the defendants served a second set of interrogatories and discovery demands, which they asserted also were not complied with by the [*2]plaintiff. Thereafter, the defendants moved, among other things, pursuant to CPLR 3124 to compel the plaintiff to provide outstanding discovery. The plaintiff opposed the motion. In an order dated June 8, 2023, the

Supreme Court granted the defendants' motion to the extent of directing the plaintiff to provide certain discovery and stated that "[f]ailure to comply with this order will result in the non-complying party being appropriately sanctioned, pursuant to CPLR 3126, upon further motion for same." Subsequently, the defendants moved, in effect, pursuant to CPLR 3126 to dismiss the complaint insofar as asserted against them and for monetary sanctions based upon the plaintiff's failure to comply with her discovery obligations, and the plaintiff opposed the motion. In an order dated February 1, 2024, the Supreme Court granted the defendants' motion without comment. Thereafter, the plaintiff moved pursuant to CPLR 5015(a) to vacate the order dated February 1, 2024, and for leave to reargue her opposition to the defendants' prior motion, in effect, pursuant to CPLR 3126 to dismiss the complaint insofar as asserted against them and for monetary sanctions. In an order dated March 25, 2024, the Supreme Court, without comment, granted that branch of the plaintiff's motion which was pursuant to CPLR 5015(a) to vacate the order dated February 1, 2024. The defendants appeal. Contrary to the plaintiff's contention, the order dated February 1, 2024, was not entered on default, and thus, there was no basis for the Supreme Court to vacate it pursuant to CPLR 5015(a)(1). The plaintiff submitted opposition to the defendants' prior motion, in effect, pursuant to CPLR 3126 to dismiss the complaint insofar as asserted against them and for monetary sanctions. As set forth in the order dated February 1, 2024, the plaintiff's opposition was read in determining the defendants' prior motion (see *id.* § 2219[a]). Moreover, there is no indication in the order dated February 1, 2024, that it was entered on default. Thus, there was no basis for the Supreme Court to grant that branch of the plaintiff's motion which was pursuant to CPLR 5015(a)(1) to vacate the order dated February 1, 2024. Moreover, contrary to the plaintiff's contention, there was no basis for the Supreme Court to vacate the order dated February 1, 2024, in the interest of substantial justice. The court retains "inherent discretionary power to relieve a party from a judgment or order for sufficient reason and in the interest of substantial justice" (*Aurora Loan Servs., LLC v Dorfman* , 170 AD3d 786 , 788 [internal quotation marks omitted]). However, "[a] court's inherent power to exercise control over its [orders and] judgments is not plenary, and should be resorted to only to relieve a party from [orders or] judgments taken through [fraud,] mistake, inadvertence, surprise or excusable neglect" (*Matter of McKenna v County of Nassau, Off. of County Attorney* , 61 NY2d 739, 742 [internal quotation marks omitted]; see *Gutierrez v Hillside Hotel, LLC* , 234 AD3d 672 , 674). Here, the plaintiff failed to provide any evidence of fraud, mistake, inadvertence, surprise, or excusable neglect that would constitute a basis for vacatur of the order dated February 1, 2024, in the interest of substantial justice (see *Aurora Loan Servs., LLC v Dorfman* , 170 AD3d at 788). Additionally, there was no basis for the Supreme Court, upon reargument, to vacate the order dated February 1, 2024, and thereupon, deny the defendants' prior motion, in effect, pursuant to CPLR 3126 to dismiss the complaint insofar as asserted against them and for monetary sanctions (see *Amato v Lord & Taylor, Inc.* , 10 AD3d 374, 375). "The nature and degree of the penalty to be imposed [on a motion] pursuant to CPLR 3126 lies within the sound discretion of the Supreme Court" (*Lucas v Stam* , 147 AD3d

921, 925 [internal quotation marks omitted]; see *Morgenstern v Jeffsam Corp.* , 78 AD3d 913, 914). "A determination to impose sanctions for conduct which frustrates the disclosure scheme of the CPLR should not be disturbed absent an improvident exercise of discretion" (*Duncan v Hebb* , 47 AD3d 871, 871). "The striking of a pleading may be warranted where the conduct of a party is shown to be willful and contumacious" (*Dokaj v Ruxton Tower Ltd. Partnership* , 91 AD3d 812, 814 ; see *Morgenstern v Jeffsam Corp.* , 78 AD3d at 914). Here, under the circumstances, the willful and contumacious nature of the plaintiff's [*3]conduct can be inferred from her failure, over an extended period of time, to comply with discovery demands, and the absence of an adequate excuse for the failure to comply (see *Morgenstern v Jeffsam Corp.* , 78 AD3d at 914). After the plaintiff's persistent and deliberate failure to timely comply with discovery demands, despite the defendants' good faith efforts to bring about compliance and the plaintiff's counsel offering no excuses other than it "slipped through the cracks," the plaintiff provided a late, deficient response. Thereafter the defendants were forced to move pursuant to CPLR 3124 to compel the plaintiff to provide outstanding discovery, as well as to request that the plaintiff's mobile device be forensically examined for completeness and to determine if there had been impermissible deletions. Here, where one of the key issues claimed by the defendants was whether the plaintiff's relationship with Abid was consensual, the plaintiff selectively and willfully withheld production of hundreds of documents relevant to the nature of her relationship with Abid, continually denying she had the ability to access them. However, it was later revealed, only after the court ordered a forensic examination of her mobile device and her personal accounts in order to investigate her communications with Abid, that these documents had been in her control. The plaintiff's deception was compounded by the fact that, notwithstanding her continual claim that she did not have access to a Dropbox account she shared with Abid because he allegedly controlled the password and she did not have access to it, on the day of the forensic examination, it became clear that she did have access to this account, which actually had been created under her personal email address. Similarly, after the plaintiff provided only selected pages from her diary, and after repeated requests were made for her to provide the remainder of the diary, she then claimed it had been stolen. Under these circumstances, granting the defendants' motion, in effect, pursuant to CPLR 3126 to dismiss the complaint insofar as asserted against them and for monetary sanctions due to the plaintiff's misconduct and dishonesty was justified (see *Morgenstern v Jeffsam Corp.* , 78 AD3d at 914). Accordingly, the Supreme Court should not have granted that branch of the plaintiff's motion which was pursuant to CPLR 5015(a) to vacate the order dated February 1, 2024. BARROS, J.P., CHRISTOPHER, WAN and TAYLOR, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court