

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

Cobo v. Pennwalt Corp. Stokes Div.

94 N.Y.2d 118 · No. 2018-06826 · Decided July 8, 2020

SUMMARY

The Appellate Division, Second Department, affirmed dismissal of the plaintiff's amended personal-injury complaint under CPLR 3126 for repeated failures to comply with discovery demands and a conditional discovery order. The court held that the plaintiff's conduct demonstrated willful and contumacious noncompliance and that counsel's inability to contact the plaintiff did not constitute a reasonable excuse. The court therefore concluded that the Supreme Court providently exercised its discretion in dismissing the complaint.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Leonard B. Austin, J.P.; Sylvia O. Hinds-Radix, J.; Valerie Brathwaite Nelson, J.; Angela G. Iannacci, J.
JURISDICTION	New York
DECIDED	July 8, 2020
DOCKET	2018-06826
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from a judgment dismissing her amended personal-injury complaint pursuant to CPLR 3126 for failure to comply with discovery demands and a conditional discovery order.
STANDARD OF REVIEW	The Appellate Division reviewed the discovery sanctions and dismissal for abuse of discretion, asking whether the Supreme Court improvidently exercised its discretion.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Sindy Cobo v. Pennwalt Corporation Stokes Division, et al.

TOPICS

- discovery dispute
- sanctions
- civil procedure
- personal injury
- appellate procedure

PRACTICE AREAS

civil procedure

torts

QUESTIONS PRESENTED

1. Whether the Supreme Court providently exercised its discretion under CPLR 3126 by dismissing the amended complaint for the plaintiff's failure to comply with discovery demands and a conditional discovery order.
2. Whether the plaintiff demonstrated a reasonable excuse sufficient to avoid the adverse consequences of the conditional order.
3. Whether a party's failure to provide discovery may be deemed willful and contumacious based on repeated inadequate responses and noncompliance with discovery orders.

HOLDINGS

1. The Supreme Court properly dismissed the amended complaint because the plaintiff repeatedly failed to provide full and complete responses to discovery demands and failed to comply with the conditional order.
2. The plaintiff's willful and contumacious conduct could be inferred from her repeated failure over an extended period to provide adequate discovery, a supplemental bill of particulars, and compliant authorizations required by court order.
3. The plaintiff was not entitled to relief from the conditional dismissal order because she failed to demonstrate a reasonable excuse for noncompliance.

KEY QUOTATIONS

*"Resolution of discovery disputes and the nature and degree of the penalty to be imposed pursuant to CPLR 3126 are matters within the sound discretion of the motion court" (*1)*

*"A court may dismiss an action if a party refuses to obey an order directing disclosure or willfully fails to disclose information" (*1)*

*"The fact that a plaintiff has disappeared or made himself or herself unavailable is not a basis for denying a motion to strike his or her complaint for failure to comply with a conditional order" (*2)*

FACTUAL BACKGROUND

The plaintiff alleged that she suffered personal injuries while using a pill compression machine at her workplace. After defendants served repeated discovery demands, including demands for a bill of particulars, authorizations, and other discovery, the plaintiff failed to respond within the deadlines established by the demands and a preliminary conference order. She subsequently provided incomplete responses and failed to comply with a conditional order requiring full and complete disclosure within 15 days.

PROCEDURAL HISTORY

The Supreme Court, Suffolk County, initially denied the defendants' first CPLR 3126 motion without prejudice. On the defendants' second motion, the court issued a conditional order requiring the plaintiff to provide outstanding discovery within 15 days and warning that the complaint would be dismissed upon noncompliance. After the plaintiff failed to provide full and complete discovery within the specified period, the Supreme Court granted the defendants' third motion, dismissed the amended complaint, and entered judgment for the defendants. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Morales v Zherka, 140 AD3d 836, 836-837
- Kihl v Pfeffer, 94 NY2d 118, 122-123
- Vays v Luntz, 179 AD3d 744, 746-747
- Marino v Armogan, 179 AD3d 664, 666
- Lotardo v Lotardo, 31 AD3d 504, 505
- Corex-SPA v Janel Group of N.Y., Inc., 156 AD3d 599, 601-602
- Westervelt v Westervelt, 163 AD3d 1036, 1037-1038
- Rosenblatt v Franklin Hosp. Med. Ctr., 165 AD3d 862, 862-863
- Wolf Props. Assoc., L.P. v Castle Restoration, LLC, 174 AD3d 838, 841
- Williams v Suttle, 168 AD3d 792, 794
- Tanriverdi v United Skates of Am., Inc., 164 AD3d 858, 859
- Sepulveda v 101 Woodruff Ave. Owner, LLC, 166 AD3d 835, 836-837
- Kidwell v Xerox Corp., 281 AD2d 188, 188
- Martinez v Belanger, 186 AD2d 40, 40-41, affd 82 NY2d 672