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Don't Do Anything Drastic, Unless: An Analysis of the Seldom Granted Motion to Strike the Answer

Just as it takes two to tango, it takes participation by two parties – the plaintiff and the defendant – for the litigation process to function effectively. This fundamental principle is reflected in CPLR 3126, which permits the court to sanction a party who “willfully” fails to participate in discovery. The most extreme and, therefore rarely granted sanction, for discovery dereliction is to strike a party’s pleading. A recent case from the Westchester County Supreme Court analyzes this unusual situation and illustrates how badly a party must behave for a court to strike a party’s pleading.

The Case: Advanced Surgery Center, LLC v. Kirkland

In *Advanced Surgery Center, LLC v. Kirkland*, Index No. 6347/2020 (N.Y. Sup. Ct. Sept. 14, 2021), the plaintiff brought suit in the Westchester County Supreme Court, claiming the defendant was unjustly enriched (a claim that arises when Party A confers a benefit on Party B without Party A receiving compensation) when the plaintiff provided medical services to the defendant without receiving payment. The defendant appeared, filed an answer to the complaint, and registered with the New York State Courts Electronic Filing System (NYSCEF) in December 2020.

The plaintiff propounded discovery on the defendant but never received responses. Between March and August 2021, four separate virtual court conferences were held, with each successive date rescheduled because the defendant failed to appear. After eight months of silence from the defendant, the court granted the plaintiff permission to file a motion to strike the answer.

In analyzing whether the answer should be stricken, Justice Joan Lefkowitz first acknowledged how “drastic” a remedy striking an Answer can be, noting the standard is “that the party’s failure to disclose [was] willful and contumacious.” Here, the court took into consideration the fact that “despite appearing in this action, filing an Answer, and registering for the NYSCEF” the defendant still declined to attend any of the four (4) scheduled conferences, failed to “furnish [any] excuse for the . . . wholesale noncompliance,” and thus satisfied the “willful and contumacious standard.” As such, the court granted the plaintiff’s motion to strike the defendant’s answer (though, with its discretion, the court declined to award costs, disbursements, and attorneys’ fees at the time of the order).

Takeaway

Judges prefer to decide a case on its merit; hence the courts are reluctant to enter a default or strike a pleading. But their patience has limits, and a willfully noncompliant party tests those limits at its peril.