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## Second Department Steps into the Sanctions Fray and Reverses Trial Court's Lenient Ruling on Discovery Misconduct

CPLR 3126 provides the trial courts with broad discretion to sanction parties for failing to comply with their discovery obligations. One of the most drastic remedies is striking a party's pleading, which requires a clear indication that a party's failure to comply with discovery is "willful and contumacious." Given the discretionary nature of a sanction determination, the appellate courts typically will not disturb a trial court's decision to sanction a party (or not). A recent case out of the Second Department, however, reveals the limits of the Appellate Division's deference: If a party's discovery misconduct is deemed sufficiently egregious, the Second Department will reverse a trial court's leniency and impose extreme sanctions on the malfeasant party.

### **The Case: *255 Butler Assoc., LLC v. 255 Butler, LLC***

The action arose out of a lease dispute between the landlord, 255 Butler, LLC, and the tenant, 255 Butler Assoc., LLC. In response to a court order directing the landlord to produce substantial documents and electronic discovery, the landlord moved to vacate the order and the tenant cross-moved to strike the landlord's answer and counterclaims on the grounds the defendant's production was "woefully deficient."

At oral argument on the cross-motions, the trial court criticized the landlord for its discovery lapses. The court reasoned that the landlord's continual failures "indicate one of only two possible scenarios: (1) that [the landlord's] ESI search and review process was poorly executed; or (2) that [the landlord] deliberately withheld or destroyed documents, thereby obstructing their attainment." The court further characterized the landlord's motion to vacate the prior discovery order as "absurd," and his refusal to produce certain unredacted documents as "borderline frivolous." Notwithstanding these findings, however, the court declined to grant the tenant's motion to strike.

On appeal, the Appellate Division, Second Department reversed the trial court's decision to not strike the landlord's pleadings. The court began by noting that "[a]bsent an improvident exercise of discretion, the determination to impose sanctions for conduct that frustrates the purpose of the CPLR should not be disturbed." In this case, however, the Second Department concluded there had been a clear showing that the landlord's behavior was "willful and contumacious" based on its repeated failures to comply with court-ordered discovery over an "extended period of time" with "inadequate explanations." On those facts, the trial court should have imposed the "drastic remedy" of striking the landlord's answer and counterclaims in their entirety.

### **Takeaway**

Management of the discovery process is ordinarily left to the trial court's sound discretion. The reversal of the trial court's

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lenient sanctions ruling in *255 Butler* suggests the Second Department will take an active role in policing discovery abuses when it deems them sufficiently egregious to warrant appellate intervention.