PRESENT: HON. DIANNE N. FREESTONE
SUPREME COURT JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

THERESA WILSON,

Plaintiff,

-against-

TULLY RINCKEY PLLC,

Defendant.

ORDER

Index No. 2019781

RJI No. 45-1-19-0505

FILED
2022 NOV -4 PM 3:53
SARATOGA COUNTY
CLERK'S OFFICE
BALLSTON SPA, NY

Appearances: Mark J. McCarthy, Counsel for the Plaintiff
Michael J. Belsky, Counsel for the Defendant

This matter having come before the Court for an in-person settlement conference in the matter above referenced on October 19, 2022, at 10:00 a.m., at the Saratoga Courthouse, 30 McMaster Street, Building 3, Ballston Spa, New York. Present at the conference was Mark J. McCarthy, counsel for the Plaintiff, and Michael J. Belsky, counsel for the Defendant.

On February 2, 2022, an in-person conference was held, by which the Court issued a So Ordered letter setting forth a schedule relative to the above referenced matter as follows:

1. The Defendant is to submit its Answer by February 11, 2022.
2. The Plaintiff is to serve its Discovery Demands upon the Defendant by February 28, 2022, and the Defendant shall have until April 1, 2022, to provide its responses and reciprocal Demands for Discovery.
3. Attorney McCarthy is to provide a status update to the Court by March 2, 2022 regarding the parties willingness to engage in mediation, including whether an

agreed-upon mediator has been selected and a date scheduled for mediation to begin.

4. Depositions of party and non-party witnesses are to be concluded by June 1, 2022.

5. A status/settlement conference will be held at the Courthouse in Ballston Spa on June 30, 2022, at 11:00 a.m. Parties are to be present or readily available with authority to engage in meaningful settlement negotiations.

    a. In the event that the matter remains unresolved, at the June 30, 2022 date the Court will set dates for submission of a Note of Issue (N.O.I.) and dates for filing of dispositive motions and responses to same.

The above referenced So Ordered letter also instructed that, pursuant 22 NYCRR Section 202.20-e, counsel shall strictly adhere to the dates set forth in the scheduling order (i.e., *"non-compliance with such an order may result in the imposition of an appropriate sanction against that party or for other relief pursuant to CPLR Section 3126"*). The above referenced So Ordered letter also instructed that application for an extension of the deadlines shall be made as soon as practicable and prior to the expiration of such deadlines.

Defendant duly filed and served its Answer on February 11, 2022. Plaintiff, however, did not serve her discovery demands by February 28, 2022. Instead, Defendant served its discovery demands on that date. Plaintiff did not provide an update to the Court by March 2, 2022. Instead, per the Court's subsequent instruction, Defendant provided an update to the Court on March 10, 2022.

On March 11, 2022, the Court issued a letter scheduling a Microsoft Teams conference in the matter above referenced for Tuesday, April 12, 2022, at 1:00 p.m.

On April 11, 2022, Defendant served a deficiency letter upon Plaintiff's counsel concerning service of Plaintiff's discovery responses and the lack thereof. With that letter, Defendant provided a copy of Defendant's discovery demands that were served on February 28, 2022.

On April 12, 2022, a Microsoft Teams conference was held, by which the Court issued a So Ordered letter setting forth a schedule relative to the above referenced matter as follows:

1. The Plaintiff is to serve its Discovery Demands upon the Defendant by April 15, 2022, and the Defendant shall have until June 1, 2022, to provide its responses and reciprocal Demands for Discovery.
2. Depositions of party and non-party witnesses are to be concluded by August 1, 2022.
3. A status/settlement conference will be held at the Courthouse in Ballston Spa on August 18, 2022, at 11:00 a.m. Parties are to be present or readily available with authority to engage in meaningful settlement negotiations.
    a. In the event that the matter remains unresolved, at the August 18, 2022 date the Court will set dates for submission of a Note of Issue (N.O.I.) and dates for filing of dispositive motions and responses to same.

The above referenced So Ordered letter also instructed that, pursuant 22 NYCRR Section 202.20-e, counsel shall strictly adhere to the dates set forth in the scheduling order (i.e., *"non-compliance with such an order may result in the imposition of an appropriate sanction against that party or for other relief pursuant to CPLR Section 3126"*). The above referenced So Ordered letter also instructed that application for an extension of the deadlines shall be made as soon as practicable and prior to the expiration of such deadlines.

On April 14, 2022, Plaintiff served her discovery demands upon the Defendant. On May 5, 2022, Defendant served a second deficiency letter upon Plaintiff's counsel concerning service of Plaintiff's discovery responses and the lack thereof. On June 1, 2022, Defendant served a third deficiency letter upon Plaintiff's counsel concerning service of Plaintiff's discovery responses and the lack thereof. On the same date, Defendant served discovery responses upon Plaintiff's counsel.

On July 13, 2022, Defendant submitted a letter to the Court, on notice, concerning the discovery issues presented in the above referenced deficiency letters. On July 18, 2022, the Court issued a letter changing the August 18, 2022 in-person conference to an in-person conference with the parties.

On August 17, 2022, Attorney McCarthy sent an e-mail correspondence to the Court requesting to adjourn the August 18, 2022 in-person conference. In the e-mail correspondence, Attorney McCarthy committed to provide all outstanding discovery upon the Defendant by September 2, 2022 and further requested that the conference be re-scheduled for a time after that which affords the Defendant a period of time to review the discovery responses. Accordingly, the August 18, 2022 conference was removed from the Court's calendar.

On August 30, 2022, the Court issued a letter scheduling an in-person settlement conference with the parties for Wednesday, October 19, 2022, at 10:00 a.m.

On October 19, 2022, Attorneys McCarthy and Belsky appeared for the in-person settlement conference. Plaintiff was not present. During said conference, Attorney McCarthy acknowledged that Plaintiff has yet to serve her discovery responses upon the Defendant. In turn, Defendant requested an Order to place Plaintiff on notice that non-compliance with any further deadlines may led to dismissal of the Complaint.

NOW, after examination and inquiry into the facts and circumstances of this case, and after due deliberation, it is hereby

ORDERED that Plaintiff shall serve her complete and full discovery responses upon the Defendant by November 4, 2022; and it is further

ORDERED that no extensions shall be granted to Plaintiff for service of her complete and full discovery responses upon the Defendant beyond November 4, 2022; and it is further

ORDERED that depositions of party and non-party witnesses are to be concluded by January 6, 2023; and it is further

ORDERED that an in-person conference shall be held on January 19, 2023, at 1:00 p.m., at the Saratoga Courthouse, 30 McMaster Street, Building 3, Ballston Spa, New York; and it is further

ORDERED that pursuant 22 NYCRR Section 202.20-e, counsel shall strictly adhere to the dates set forth in this Order (i.e., *"non-compliance with such an order may result in the imposition of an appropriate sanction against that party or for other relief pursuant to CPLR Section 3126"* to include dismissal of Plaintiff's Complaint with prejudice).

IT IS SO ORDERED,

Dated: October 24, 2022
Ballston Spa, New York

Diane N. Freestone
HONORABLE DIANNE N. FREESTONE
Justice

ENTERED
Craig A. Hayner
Saratoga County Clerk

To: Mark J. McCarthy (via e-mail)
Michael J. Belsky (via e-mail)
Allen A. Shoikhetbrod (via e-mail)

2022 NOV -4 PM 3:53
SARATOGA COUNTY
CLERK'S OFFICE
BALLSTON SPA, NY
ENTERED