

115 A.D.3d 641, 981 N.Y.S.2d 569, 2014 N.Y. Slip Op. 01430
(Cite as: 115 A.D.3d 641, 981 N.Y.S.2d 569)

Supreme Court, Appellate Division, Second Department, New York.

Ana ESPINAL, respondent,

v.

NEW YORK CITY HEALTH & HOSPITALS CORPORATION, appellant.

March 5, 2014.

Zachary W. Carter, Corporation Counsel, New York, N.Y. (**Edward F.X. Hart** and **Julie Steiner** of counsel), for appellant.

Greenberg & Stein, P.C., New York, N.Y. (**Scott A. Steinberg** of counsel), for respondent.

*570 In an action to recover damages for personal injuries, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Flug, J.), entered March 1, 2013, as granted that branch of the plaintiff's motion which was pursuant to CPLR 3126(3) to strike the answer.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Actions should be resolved on the merits wherever possible (*see Maiorino v. City of New York*, 39 A.D.3d 601, 601, 834 N.Y.S.2d 272). However, the striking of a pleading may be an appropriate sanction where there is a clear showing that the failure to comply with discovery demands is willful or contumacious (*see Flynn v. City of New York*, 101 A.D.3d 803, 804, 955 N.Y.S.2d 637; *Montemurro v. Memorial Sloan-Kettering Cancer Ctr.*, 94 A.D.3d 1066, 942 N.Y.S.2d 623; *Byam v. City of New York*, 68 A.D.3d 798, 801, 890 N.Y.S.2d 612). The willful or contumacious character of a party's conduct can be inferred from the party's repeated failure to respond to demands or to comply with discovery orders (*see Silberstein v. Maimonides Med. Ctr.*, 109 A.D.3d 812, 814, 971

N.Y.S.2d 167; *Montemurro v. Memorial Sloan-Kettering Cancer Ctr.*, 94 A.D.3d at 1066, 942 N.Y.S.2d 623).

Here, the willful and contumacious conduct of the defendant can be inferred from its repeated failures, over an extended period of time and without an adequate explanation, to comply with the plaintiff's post-deposition demands for the disclosure of certain work orders and the production of certain witnesses, including a witness with knowledge of the facts, as well as to comply with several orders mandating such discovery (*see Daniels v. City of New York*, 78 A.D.3d 883, 884, 910 N.Y.S.2d 691; *Pirro Group, LLC v. One Point St., Inc.*, 71 A.D.3d 654, 655, 896 N.Y.S.2d 152; *Byam v. City of New York*, 68 A.D.3d at 801, 890 N.Y.S.2d 612). Accordingly, the Supreme Court providently exercised its discretion in granting that branch of the plaintiff's motion which was pursuant to CPLR 3126(3) to strike the answer.

RIVERA, J.P., **DICKERSON**, **COHEN**, **HINDS-RADIX** and **MALTESE**, JJ., concur.

N.Y.A.D. 2 Dept. 2014.

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