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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 VIOLAINE GALLAND, *et al.*

4 Plaintiff,

New York, N.Y.

5 v.

14 Civ. 4411 (RJS)

6 JAMES JOHNSTON, *et al.*

7 Defendants.

8 -----x

9 January 12, 2017
12:05 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,

12 District Judge

13
14 APPEARANCES

15
16 PUBLIC CITIZEN LITIGATION GROUP
Attorneys for Defendants
17 BY: PAUL A. LEVY

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(Case called)

THE COURT: Let me take appearances. There is no one here for the plaintiffs, I should state for the record.

For the defendant? For the defendant James Johnston and Judith Johnston.

MR. LEVY: Paul Alan Levy from Public Citizen.

THE COURT: Mr. Levy, good afternoon.

As I said, plaintiffs are not here. This is an order to show cause hearing as to why the case should not be dismissed with respect to the remaining plaintiffs Violaine Galland and Paris Studios.

I issued an order on December 18th dismissing for failure to prosecute with respect to the first named plaintiff Claude Galland. The reason I didn't dismiss with respect to his wife, Violaine, was because it appeared that she had not been noticed on my first order to show cause. Anyway so, we gave her an opportunity to come back in. I issued an order on the 18 than told her to make a written submission by a date certain and to appear today at noon for this order to show cause hearing. So, I had asked her to show cause in writing no later than January 5th why she shouldn't be sanctioned for failing to appear at her deposition, and also to appear here today at noon. I also ordered that plaintiff Paris Studios, which is a legal entity that appears would need to be represented by an attorney, show cause why it shouldn't have

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1 the claim dismissed because of failure to prosecute.

2 So, I never got anything from Paris Studios. I did
3 receive, on January 3rd, I believe it was --

4 MR. LEVY: Yes.

5 THE COURT: -- a document from Ms. Galland dated the
6 3rd or docketed the 3rd of January, it is docket no. 115. It's
7 her response to the order to dismiss. It basically asks me to
8 reconsider dismissing the case with respect to Dr. Galland. It
9 is not really Ms. Galland's place to do that. Dr. Galland
10 should have do that himself, which he hasn't. It also takes
11 issue with a number of representations made in the affidavit of
12 Ms. Porter. It doesn't directly contradict some of the most
13 crucial ones, however, including what transpired on November
14 2nd which was the day of the deposition. It's sort of
15 equivocal, it seems to me, and perhaps carefully so. In any
16 event, it doesn't really address the issues that I would think
17 need to be addressed as to whether or not she basically took a
18 call, quickly got off the call, and then made herself
19 unavailable for the call that was supposed to be the
20 deposition. And so, I don't think this written submission
21 contradicts the statement of Ms. Porter, although it does
22 allege that Mrs. Porter is perjurious and making outrageous
23 claims. I don't think it really fully engages on the facts
24 alleged in the numbered paragraphs of Ms. Porter's affidavit.

25 She also indicates that she and her husband were never

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1 notified with respect to the December 18th order to show cause
2 hearing and I don't know that to be true. I also then just
3 received, recently, a response to this from Mr. Levy -- right,
4 Mr. Levy, this is from you?

5 MR. LEVY: Yes, your Honor.

6 THE COURT: That attaches an affidavit and you
7 indicate that you sent, on December 15th, e-mails to
8 Dr. Galland, you attached Ms. Porter's affidavit, and you also
9 referenced in that Court's order that plaintiff show cause why
10 the action should not be dismissed. And so, it seems that
11 Dr. Galland was on notice and certainly is the case that
12 Mrs. Galland was on notice of this hearing and she -- her
13 written submission doesn't suggest that she is not going to be
14 here or ask to appear telephonically or anything. It doesn't
15 address that.

16 So, it does question or suggest that it was improper
17 to schedule something on the 18th of December knowing that she
18 was stationed in Switzerland and how expensive it would be to
19 fly last minute during the holiday seasons to appear on
20 December 18th. It also takes issue with or criticizes the
21 Court and counsel for not sending texts to Dr. Galland or
22 Mrs. Galland about when things were happening to make extra
23 courtesy calls, things like that.

24 I mean, it just misunderstands that when one is a
25 plaintiff in a lawsuit one has an obligation to stay apprised

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1 of what is on the docket sheet, to stay apprised of Court
2 orders and to, when noticed it appear, to make sure that you
3 are peer. This case has a long history, I won't recount it all
4 here other than to say that Judge Ellis I think had the
5 patience of Job and perhaps I don't but I think at this point
6 Judge Ellis wouldn't either. And, just, there has been too
7 much -- too much opportunity to get this on track and too many
8 opportunities that were missed, so I am certainly going to
9 dismiss with prejudice against the corporate plaintiff, Paris
10 Studios. I am also going to dismiss for failure to prosecute
11 with respect to Ms. Galland since she's the one making a
12 request for reconsideration for Dr. Galland. I am not even
13 going to recognize that motion. Dr. Galland has not said
14 anything since I issued my order. That one I know was mailed,
15 the docket sheet reflects it was mailed on or about December
16 18th. So, I think the next day, the 19th. And the fact that
17 Mrs. Galland has responded to that order shows, clearly, that
18 she was in receipt and that her husband presumably was a waiver
19 it as well.

20 Have you had any communications with either party
21 since my order on the 18th?

22 MR. LEVY: As a courtesy I emailed a copy of the, your
23 December 18 order to Dr. Galland at the e-mail addresses that I
24 have for him, just to let him know and to make sure that he was
25 on those.

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1 THE COURT: And you have heard nothing back?

2 MR. LEVY: I did not get a bounce back, I did not get
3 a response.

4 THE COURT: So, I think that there are some
5 unrealistic expectations on the part of the plaintiffs in this
6 case as to what lengths the Court should go to to make sure
7 that they are looking out for their own interests and that's
8 now how it works, even for pro se litigants. I think the Court
9 has been very accommodating and certainly has given notice and
10 opportunities for the plaintiffs to be heard on this subject
11 and to explain why the drastic sanction of dismissal for
12 failure to prosecute is unwarranted but they have not done
13 that, the written submission of Mrs. Galland certainly does
14 nothing to suggest to me that I ought to do something other
15 than dismiss at this point.

16 I guess I should also just note for the record-it is
17 all in the record but a level of discourse engaged in by
18 Dr. Galland at various points is puzzling, troubling, and
19 highly inappropriate. I mean, I am looking at docket entry 106
20 which is plaintiff's reply to a letter dated October 2nd, it
21 was docketed on October 16th, I think.

22 In any event, it just is certainly incredibly
23 disrespectful and insulting toward Mr. Levy and, look, people
24 can disagree with their adversaries, people can be obviously
25 upset with the way litigation has gone, that's fair, nobody has

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1 to be happy about everything that goes on in a case, but to
2 refer to Mr. Levy as nothing more than another one-degree,
3 one-language ignoramus attorney from Washington; Mr. Paul Levy,
4 this ignorant one-degree attorney; this cretin; this imbecile
5 is brain dead, Mr. Levy is an idiot. I mean, these are just, I
6 don't know what is reflected by this, it could be a lot of
7 things but it is not appropriate. It refers to Ms. Porter as
8 perjurious, accuses her of lying, makes the broader statement
9 of lying being endemic and systemic among younger attorneys.
10 That contributes to my view that this is a case that has passed
11 the point of being salvaged and so I will issue an order that
12 dismisses the case, with prejudice, with respect to all of the
13 plaintiffs and that will close the case.

14 Is there anything else we should cover, Mr. Levy.

15 MR. LEVY: No. Thank you, your Honor.

16 THE COURT: Interesting. Thanks a lot. Have a good
17 day.

18 MR. LEVY: Thank you, your Honor.

19 THE COURT: If you need a copy of the transcript, you
20 can take it up with the court reporter.

21 Wait, one second. I will issue a short order as to,
22 memorializing that I am dismissing. Have a nice day.

23 MR. LEVY: Thank you, your Honor.

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