

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1505

CA 09-01221

PRESENT: HURLBUTT, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ.

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HOUSEHOLD FINANCE REALTY CORPORATION OF  
NEW YORK, PLAINTIFF-APPELLANT-RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID W. ROBINSON, INDIVIDUALLY AND AS  
ADMINISTRATOR OF THE ESTATE OF  
SANDRA F. ROBINSON, DECEASED,  
DEFENDANT-RESPONDENT-APPELLANT.

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PHILLIPS LYTTLE LLP, BUFFALO (CYNTHIA L. THOMPSON OF COUNSEL), FOR  
PLAINTIFF-APPELLANT-RESPONDENT.

CHAMBERLAIN D'AMANDA OPPENHEIMER & GREENFIELD LLP, ROCHESTER (K. WADE  
EATON OF COUNSEL), FOR DEFENDANT-RESPONDENT-APPELLANT.

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Appeal and cross appeal from a judgment of the Supreme Court,  
Monroe County (Evelyn Frazee, J.), entered September 9, 2008. The  
judgment granted plaintiff's motion to dismiss the counterclaims and  
granted defendant's motion to dismiss the complaint.

It is hereby ORDERED that the judgment so appealed from is  
unanimously affirmed without costs.

Memorandum: We affirm the judgment insofar as it granted  
plaintiff's motion to dismiss the counterclaims for reasons stated in  
the decision at Supreme Court dated July 14, 2008. We also affirm the  
judgment insofar as it granted defendant's motion to dismiss the  
complaint as a sanction pursuant to CPLR 3126. Defendant met his  
initial burden by establishing that plaintiff engaged in willful,  
contumacious or bad faith conduct by failing to comply with a court  
order concerning outstanding discovery demands, thereby shifting the  
burden to plaintiff to offer a reasonable excuse for its  
noncompliance, and plaintiff failed to meet that burden (*see Hill v  
Oberoi*, 13 AD3d 1095).

Entered: December 30, 2009

Patricia L. Morgan  
Clerk of the Court