

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JOAN A. MADDEN

PART 11

Justice

JEFFREY JOHNSON,

Plaintiff,

INDEX NO. : 102034/12

MOTION DATE:

- v -

S.W. MANAGEMENT, LLC, ET AL,

Motion seq. No.

Defendants.

The following papers, numbered 1 to _____ were read on this motion to strike.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

By decision and order dated December 10, 2013 (hereinafter "the December 10 order"), and after hearing both sides on the record in connection with defendants' motion to preclude (motion seq. 006), the court directed that:

plaintiff respond within 30 days to (1) defendants' demand nos. 1, 2, 3, to the extent of providing authorizations for plaintiff's medical records with respect to injuries or conditions resulting from defendants' conduct, to the extent any injuries or conditions are alleged in the complaint, (2) demand no. 14, to the extent of providing photographs of the building or his apartment to the extent plaintiff claims the photographs depict conditions alleged in the complaint, and (3) demand nos. 15 and 16 to the extent such correspondence, if any, relates to conditions in the apartment or plaintiff's medical condition as alleged in the complaint [and that] plaintiff respond with specificity within 30 days to defendants' Bill of Particulars dated December 14, 2012.

The December order further provided that if plaintiff failed to comply, sanctions pursuant to CPLR 3126 would be imposed.

Plaintiff, who is pro se, failed to comply with the December 10 order, and defendants again moved for discovery sanctions based on the violation of the order. By decision and order dated October 2, 2014, the court granted defendants' motion to the extent of ordering that plaintiff comply with the December 10 order, on or before November 2, 2014, or that he be

precluded at trial from offering evidence with respect to the items demanded.

As plaintiff failed to comply with the October 2, 2014 order, it is

ORDERED that plaintiff is precluded from offering at trial medical evidence with respect to injuries or conditions allegedly resulting from defendants' conduct,¹ photographs of the building or his apartment depicting conditions alleged in the complaint, and correspondence relating to the conditions in the apartment or plaintiff's medical conditions; and is it further

ORDERED that as plaintiff has failed to respond with specificity to the Bill of Particulars dated December 14, 2012, which defendants contend concern purported negligence claims, plaintiff is precluded from introducing evidence to support any claims of negligence.²

DATED: December 16, 2014

J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

¹The injuries alleged include loss of sleep, injuries caused by second-hand smoke, emotional distress caused by noise and headaches. On December 4, 2014, plaintiff admitted on the record that he had not received any medical treatment for these or other alleged injuries and conditions. The court notes that plaintiff consistently states on the record that the court told him he could provide an affidavit instead of authorizations. The transcript from the December 13, 2013 argument on the record reflects that with respect to this issue the court stated "I am directing you (i.e. plaintiff) to provide authorizations for your medical records for injuries claimed as a result of defendants' conduct. If you do not provide those authorizations within 30 days, you shall be precluded from offering such evidence. However, if you have not received any medical treatment to this date, you may state that in an affidavit." Plaintiff has not provided such an affidavit.

²According to defendants, negligence can be inferred from various parts of the complaint, including paragraphs 218, 232, 262, 284-285, and 293.