

**Scialdone v Stepping Stones Assoc., LP**

2013 NY Slip Op 34141(U)

January 28, 2013

Supreme Court, Westchester County

Docket Number: 12514/11

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

**FILED AND ENTERED**  
ON 1-30-2013  
WESTCHESTER COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER - COMPLIANCE PART

-----X  
GREGORY P. SCIALDONE,

Plaintiff,

-against-

STEPPING STONES ASSOCIATES, LP., and DEROSA BUILDERS, INC.,

Defendants.

-----X  
LEFKOWITZ, J.

**DECISION & ORDER**

Index No. 12514/11  
Motion Date: Jan. 28, 2013

Seq. #9

**FILED**  
JAN 30 2013  
TIMOTHY C. IDOM  
COUNTY CLERK  
COUNTY OF WESTCHESTER

The following papers numbered 1 to 18 were read on this motion by defendants for order (1) dismissing the complaint or precluding plaintiff from offering evidence due to plaintiff's willful and contumacious failure to comply with defendants' discovery demands and demand for a verified bill of particulars; or, alternatively, (2) compelling plaintiff to comply with defendants' discovery demands and provide documents in an organized fashion either "Bates" stamped or appropriately designated and responsive to the demands and to completely respond to the documents demands and demand for a verified bill of particulars; (3) awarding defendants sanctions and attorney's fees for the cost of the conferences and present motion; (4) striking plaintiff's various discovery demands and Demand for a Verified Bill of Particulars as, inter alia, overbroad, burdensome, and irrelevant; (5) striking plaintiff's demand for depositions upon oral examinations of defendants and nine identified witnesses on behalf of defendants and striking plaintiff's demands for the production of documents that are, inter alia, overbroad, irrelevant, burdensome and not calculated to lead to admissible evidence; and (6) for such other relief as is deemed appropriate under the circumstances.



Order to Show Cause - Affirmation in Support - Exhibits A-O	1-17
Affidavit of Service	18
Filed Papers (Preliminary Conference Stipulation/Order)	

Upon the foregoing papers and the proceedings held on January 28, 2013, the motion is determined as follows:

Factual and Procedural Background

Plaintiff commenced this action for, inter alia, declaratory and injunctive relief relating to a parking space at an apartment complex owned and operated by defendants. Plaintiff is a tenant in the apartment complex. While plaintiff currently has two parking spaces, he had been using a third parking space. It is the third parking space that is at issue in this action. Plaintiff claims that he is entitled to the third parking space. After defendant served an answer alleging

affirmative defenses and counterclaims alleging breach of lease, plaintiff amended the complaint to allege, inter alia, harassment based upon plaintiff's refusal to sign a bedbug extermination agreement, which plaintiff claims caused emotional, psychological and physical damages, as well as claims for fraud and constructive eviction.

Defendants contend that plaintiff's use of the third parking spot was temporary and revocable. Defendants assert that no other tenant has three spots and that plaintiff was given the third parking spot as a personal and family accommodation since plaintiff is the nephew of the principal of one of the defendants. Defendants further allege that plaintiff voluntarily gave up the third parking spot at defendants' request, and defendants have rented the parking spot to another tenant.

Defendants and plaintiff served a demand for a verified bill of particulars and a combined demand for discovery on or about July 18, 2012. .

Plaintiff served a verified bill of particulars and a response to defendants' discovery demands on or about August 23, 2012. Plaintiff's response to the discovery demands consisted of three volumes of documents. In the verified bill of particulars, plaintiff alleges that as a result of defendants' conduct, he incurred, inter alia, medical bills in the amount of approximately \$3,000, parking tickets in the amount of \$920, and damages to motor vehicles in the amount of \$1,500. Plaintiff also seeks, inter alia, treble and punitive damages.

By letter dated August 27, 2012, defendants objected to plaintiff's demands for document discovery as, inter alia, overbroad in scope, harassing, seeking irrelevant and privileged information, and not in the possession of defendants. With respect to the demand for a verified bill of particulars, defendants objected to plaintiff's demand as, inter alia, burdensome, seeking irrelevant information, referring to matters not proper for a demand for a verified bill of particulars, and seeking privileged work product.

By Supplemental/Amended Notice to Take Deposition dated August 31, 2012, plaintiff noticed the depositions of defendants for September 14, 2012. By letter dated September 5, 2012, defendants objected to the notice and did not produce witnesses for depositions on that date.

Defendants filed a motion to dismiss for failure to state a cause of action on September 21, 2012, with an original return date of October 5, 2012. The motion is still pending.<sup>1</sup>

By letter dated September 28, 2012, defendants objected to plaintiff's response to the demand for a verified bill of particulars as incomplete and unresponsive. In the same letter, defendants objected to plaintiff's response to document demands on the ground that the over 1,500 pages of documents were not delineated, such that defendants could not determine as to

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<sup>1</sup> Court records indicate that as of October 31, 2012, no opposition had been filed. Court records also establish that the motion was adjourned from October 5, 2012 to November 5, 2012, and subsequently adjourned to December 3, 2012, upon reassignment of the motion from Justice Gerald E. Loehr to Justice Linda Jamieson.

which demands the documents were being produced. By separate letter also dated September 28, 2012, defendants again objected to the response to the document demands on the basis that the response was not delineated and also on the basis that the response was incomplete as there was no response to demands 30-36 and 38-52. In the second letter, defendants also asserted that plaintiff had failed to comply with the demands for medical information, collateral source information, General Obligations Law § 15-108 information, or provide demanded authorizations. Defendants contend that plaintiff failed to respond to the objections.

Thereafter, conferences were held in the Compliance Part on October 3, 2012, October 16, 2012, November 20, 2012 and December 5, 2012. Defendants assert that plaintiff had not complied with the discovery demands as of the conference on December 5, 2012 and the court issued a briefing schedule for the present motion.<sup>2</sup>

Defendants now seek the following relief: (1) an order dismissing the complaint or precluding plaintiff from offering evidence based on their willful failure to provide responses to defendants' discovery demands and failure to provide a verified bill of particulars, or compelling plaintiff to provide documents in an organized fashion and completely respond to defendants' document demands; (2) an order awarding defendants sanctions and attorney's fees for the cost of the conference and motion; (3) an order striking plaintiff's discovery demands and demand for verified bill of particulars as, inter alia, overbroad, burdensome, outside the scope of the litigation; and (4) an order striking plaintiff's demand for depositions of defendants and nine identified witnesses on behalf of defendants and demand for the production of documents as, inter alia, overbroad, irrelevant, and burdensome.

Plaintiff has not submitted written opposition to the present motion.<sup>3</sup> Counsel for plaintiff, however, appeared at oral argument and requested an extension of time to submit written opposition due, inter alia, to her heavy schedule in criminal matters. This court denied the request for an extension and entertained oral argument from both plaintiff and defendants.

#### Plaintiff's Response to Defendant's Demand for Verified Bill of Particulars and Discovery Demands

First, defendants seek an order dismissing the complaint or precluding plaintiff from offering evidence based on their willful failure to provide responses to defendants' discovery

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<sup>2</sup> The briefing schedule also set a schedule for a motion by plaintiff to compel, but plaintiff failed to submit an Order to Show Cause by the December 19, 2012 deadline set forth in the briefing schedule. On January 7, 2013, the court issued a second briefing schedule for plaintiff's motion to compel.

<sup>3</sup> On December 24, 2012, after the deadline for plaintiff to file his motion to compel had expired, plaintiff filed a proposed Order to Show Cause seeking an extension of time to file opposition to the present motion and an extension of time to file a motion to compel defendants to provide discovery. The proposed Order to Show Cause also contained a temporary stay of the present motion, which this court struck and denied. Notwithstanding the denial of the stay, plaintiff failed to submit opposition papers. Plaintiff's Order to Show Cause is returnable on February 4, 2013.

demands and failure to provide a verified bill of particulars, or compelling plaintiff to provide documents in an organized fashion and completely respond to defendants' document demands.

Initially, the court finds that plaintiff's production of unnumbered documents in "volumes" without reference to the individual demands was improper. CPLR 3122 (c) requires a person to produce documents as they are kept in the regular course of business or shall organize and label them to correspond to the categories in the request. Moreover, CPLR 3120 (2) permits a party seeking document discovery to demand documents by "individual item or category" (*see Connors, Practice Commentary, McKinney's Cons Laws, NY, Book 7B, CPLR C3120:4*). Accordingly, plaintiff was required to provide an organized response identifying the demand to which each document being disclosed (*see generally State v Sand and Stone Assocs.*, 282 AD2d 954 [3d dept 2001] [plaintiff's production of serially numbered documents were not adequately organized in response to demand for documents]; *Chalk v Vernukkuibm LLC*, 2002 WL 34215954 [Sup Ct, New York County, Oct. 3, 2002, Cahn, J.][plaintiffs directed to produce response to defendants' document demands specifying which Bates-stamped documents correspond to each of defendants' numbered requests]).

Defendants also correctly contend that, to date, plaintiff has failed to produce other demanded discovery such as medical records and authorizations, collateral source information, General Obligations Law § 15-108 information, and authorizations for Worker's Compensation Board and Worker's Compensation Insurance Carrier records. Plaintiff's response to these discovery demands stated that the discovery would be provided subject to objections. There is nothing in the record, however, to indicate that plaintiff has refused to provide the discovery. Rather, as noted by defendants in support of the motion, counsel for plaintiff advised the court at the November, 2012 conference, that she did not know if plaintiff was pursuing his claims of physical injury and had to inquire of plaintiff. Notably, there was no deadline set forth in the Preliminary Conference Stipulation and Order with respect to the production of medical records and authorizations or other discovery demanded by defendants. As to other discovery demands, the Preliminary Conference Stipulation and Order directed that all responses to discovery demands be served no later than August 20, 2012, and there were no further court orders directing the specific discovery be produced.

CPLR 3126 provides penalties for a party's refusal to comply with an order for disclosure or willful failure to disclose information which the courts finds ought to have been disclosed, including preclusion or the striking of the party's pleadings. "The nature and degree of the penalty to be imposed on a motion pursuant to CPLR 3126 is a matter generally left to the discretion of the Supreme Court" (*Carbajal v Bobo Robo*, 38 AD3d 820 [2d Dept 2007]). To invoke the drastic remedy of striking a pleading a court must determine that the party's failure to disclose or appear was willful and contumacious (*Greene v Mullen*, 70 AD3d 996 [2d Dept 2010]; *Maiorino v City of New York*, 39 AD3d 601 [2d Dept 2007]). Here, although defendants contend that plaintiff failed to provide complete responses to their demand for a verified bill of particulars and their demand for documents, plaintiff did provide responses including the production of 1500 pages of documents, as well as a verified bill of particulars. Accordingly, under the circumstances of this case, the remedy of preclusion or dismissal of the complaint are not warranted at this time.

Defendants, however, have demonstrated entitlement to relief pursuant to CPLR 3124. CPLR 3124 provides that if a person fails to respond to or comply with any discovery demand, the party seeking disclosure may move to compel compliance or a response. As held earlier, the documents produced by plaintiff were not organized or identified as corresponding to specific demands. Moreover, plaintiff did not provide a fully responsive verified bill of particulars and failed to provide the other demanded discovery, including medical records and authorizations, collateral source information, General Obligations Law § 15-108 information, and authorizations for Worker's Compensation Board and Worker's Compensation Insurance Carrier records. At this time, an order compelling plaintiff to provide a fully responsive verified bill of particulars and the outstanding discovery, including producing the documents in an organized manner, is appropriate. In the event that plaintiff fails to provide the discovery by the deadline set forth in this order, defendants can then seek a briefing schedule for a motion striking the complaint and dismissing the action pursuant to CPLR 3126.

Accordingly, the branch of defendants' motion seeking an order striking the complaint or precluding plaintiff is denied. The branch of the motion seeking an order compelling plaintiff to provide outstanding discovery is granted as set forth below: Plaintiff shall serve a supplemental response to defendants' demand for documents and responses to defendants' other demands for discovery within 30 days of this order. In the supplemental response to the demand for documents, plaintiff shall provide numbered documents, identify which documents are being produced in response to each demand, and organize the documents to correlate to each demand. In the supplemental response to the demand for documents, plaintiff shall fully respond to each demand, including demands nos. 30-36 and 38-52, except as to demand no. 44<sup>4</sup> and 48<sup>5</sup>, and as set forth below.<sup>6</sup> In the event that plaintiff is not claiming lost earnings, plaintiff shall respond to the demands regarding his employment, education, earnings, Workers' Compensation and income tax returns as "Not relevant insofar as lost earnings are not being claimed by plaintiff," and plaintiff shall not have to produce documents in response to those demands (demands nos. 40-43, 45, 46, 49-50). In the event that the demanded records do not exist, plaintiff shall so indicate in the supplemental response.

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<sup>4</sup> The demand for pleadings, orders and stipulations in the present action, which are either public records or in the possession of defendants is improper.

<sup>5</sup> At oral argument, plaintiff withdrew the claim of physical injuries. Accordingly, plaintiff is not required to respond to demands regarding his physical condition or treatment. Plaintiff did not withdraw his claims as to psychological and emotional injuries and, therefore, must provide responses to discovery demands regarding his psychological and emotional conditions and treatment.

<sup>6</sup> Although defendants do not specifically demand a supplemental response to demands no. 25 - 27, the court notes that demands no. 25-26 improperly seek building and zoning codes, as well as zoning ordinance changes, which are public records and not subject to production in discovery. Demand no. 27, which seeks the Stepping Stones Offering Plan, is improper as the plan was drafted by defendants and in defendants' possession.

During oral argument, plaintiff's counsel withdrew plaintiff's claims for physical injuries, but did not withdraw plaintiff's claims for psychological and emotional injuries. In light of the foregoing, plaintiff does not need to provide responses to demands with respect to plaintiff's physical condition and treatment. Plaintiff, however, shall respond to demands regarding his psychological and emotional conditions and treatment, unless, within 20 days of this order, plaintiff discontinues his claim for damages based upon emotional and psychological injuries. In the event plaintiff withdraws those claims, plaintiff does not have to provide responses to the document demands regarding his mental and emotional condition or the treatment of such conditions.

#### Sanctions and Attorney's Fees

Defendants also seek an award of sanctions and attorney's fees for the appearances at the pre-motion conference and for the present motion. Defendants are entitled to an award of attorney's fees and costs for the present motion in the amount of \$250 since plaintiff's conduct necessitated the present motion. Although defendants advised plaintiff of the deficiencies of the responses to the discovery demands and demand for a verified bill of particulars, plaintiff failed to correct the deficiencies without court intervention. Moreover, despite being advised during court conferences of the deficiencies in the discovery responses, plaintiff failed to provide organized document discovery as mandated by CPLR 3122 (c), or provide complete responses to the other discovery demands and the demand for a verified bill of particulars.

#### Strike Plaintiff's Document Demands

Defendants also seek an order striking plaintiff's document demand based upon the objections contained in defense counsel's letter dated August 27, 2012.

As set forth earlier, in the letter of August 27, 2012, defendants generally objected to plaintiff's demand for document discovery as, inter alia, overbroad in scope, harassing, burdensome, vague, seeking irrelevant and privileged information, and seeking information not in the possession of defendants. Defendants specifically objected to demands no. 2-18, 21, 26-32, 39-51, 59, 63, 70 and 79. Although defendants specifically objected to the foregoing document demands, defendants repeated their general objections as to the demands with respect to all of the demands except demand no. 21. As to demand no. 21, which seeks originals of any document, notice, legal notice or writing claimed by defendants to have been improperly attached to any part of the premises or any automobile by tape indicating notice to the defendants or any tenant, defendants objected to the demand on the ground that the originals would not be produced without a bonded guaranty that if tested, there will be no damage.

During oral argument, plaintiff asserted that discovery with respect to the number of parking spaces available at the apartment complex was relevant in light of defendants' defense that there is insufficient parking and defendants needed plaintiff's third parking space for another tenant. Plaintiff further asserted that discovery as to the taxes defendants paid for parking, as well as defendants' mortgage and title insurance on the apartment complex was also relevant to that defense.

Although it appears from a review by the court of plaintiff's document demand that some of the demands are burdensome and overbroad in scope as they seek documents regarding parking at defendants' apartment complex from 2008 through 2012, in light of plaintiff's allegation that he was constructively evicted from his third parking space on March 2, 2011, defendants failed to provide the court with specifics regarding their objections to each document demand. Rather, defendants' objections to the specific document demands referred back to their numerous general objections. Additionally, although defendants generally claim the documents demanded are privileged, defendants fail to specify which privilege applies to each document demand. Moreover, while defendants provided partial responses to certain demands to which they are objecting, defendants failed to specify the grounds for failing to fully respond to the demand.

In view of the foregoing, at this time, the court is unable to make a determination as to the propriety of plaintiff's document demands. The parties are, therefore, directed to provide the court with supplemental submissions detailing their objection to, or the relevance of, each of the objected document demands. Any objections to the document demands must be set forth with specificity. Such supplemental submissions shall not exceed five double spaced pages and shall be filed with the court and served so as to be received on or before February 8, 2013 at 12:00 P.M. The court reserves decision on the branch of defendants' motion seeking to strike plaintiff's document demand.

#### Strike Plaintiff's Demands For Bill of Particulars

With respect to the demand for a bill of particulars, defendants objected to plaintiff's demand as, inter alia, "burdensome, irrelevant, redundant, not calculated to lead to admissible evidence, referring to matters not proper for a demand for a verified bill of particulars, reference allegations not made, are immaterial and irrelevant; seek work product." Defendants specifically objected to the following items of the demand: Part II (As to All 30 Affirmative Defenses): b-i, m, q, u; Part III (As to Each of the Separate Affirmative Defenses): 14-15a; Part IV (As to the Counter Claims): 31, 32b, 33 A-E, M, N, 34 A-B, E, R-X, 35 A-B. Each "specific" objection, however, referred back to certain of the general objections. Defendants also objected to the plaintiff's demand for a bill of particulars on the ground that instead of seeking specific allegations with respect to the affirmative defenses, it improperly asks "state generally." Defendants also objected to the demand on the basis that it is an impermissible fishing expedition and seeks to cause unreasonable cost, annoyance and expense.

Plaintiff did not offer any specific argument with respect to this issue at oral argument, but did generally contend that discovery with respect to the availability of parking at the apartment complex was relevant to the issues in the action in light of defendants' defense that there was a shortage of parking spaces and plaintiff's third parking space was needed for another tenant.

The role of a bill of particulars is to amplify a pleading, including an affirmative defense and a counterclaim, "by setting forth in greater detail the nature of the allegations and what the party making them intends to prove" in order to limit proof and prevent surprise at trial

(*Northway Eng'g v Felix Indus.*, 77 NY2d 332, 334 [1991]; see *Jurado v Kalache*, 93 AD3d 759, 760 [2d Dept 2012]; *Ginsberg v Ginsberg*, 104 AD2d 482, 484 [2d Dept 1984]). The laws relied upon, as well as the facts alleged, must be particularized (*Ramondi v Paramount Fee, LP*, 30 AD3d 396, 397 [2d Dept 2006]; *Alvarado v New York City Hous. Auth.*, 302 AD2d 264 [1<sup>st</sup> Dept 2003]; *Sacks v Town of Thompson*, 33 AD2d 627 [3d Dept 1969]). A bill of particulars is not a form of disclosure and may not be used to obtain evidence (*Northway Eng'g v Felix Indus.*, 77 NY2d at 334; *Tully v Town of North Hempstead*, 133 AD2d 657 [2d Dept 1987]; *Ginsberg v Ginsberg*, 104 AD2d at 484).

Initially, the court notes that defendants failed to provide a formal response to plaintiff's demand for a bill of particulars and instead responded by letter dated August 27, 2012, as set forth above. CPLR 3042(a) provides that, "[w]ithin thirty days of service of a demand for a bill of particulars, the party on whom the demand is made shall serve a bill of particulars complying with each item of the demand, except any item to which the party objects, in which event the reason for the objection shall be stated with reasonable particularity." Accordingly, defendants should have provided plaintiff with a bill of particulars responding to all the demands to which they did not specifically object and setting forth their objections with particularity to the limited items to which they objected.

On this motion, although defendants have failed to set forth with particularity their objections to the demands to which they objected to in their letter response, the court, in an effort to avoid further delays in this action, has reviewed the items to which defendants have objected. As to Part II of the demand, which seeks information with respect to all of defendants' 30 affirmative defenses, the court finds items b-d, g-i, m, q, and u are proper, and item e is improper. As to Part III of the demand, which seeks information with respect to the separate affirmative defenses, the court finds items 14 and 15(a) are proper. Notably, a party who asserts an affirmative defense has the burden to establish that defense and, therefore, the obligation to amplify that defense in a bill of particulars. As to Part IV of the demand, which seeks information with respect to defendants' counterclaims, the court finds the following: Items 31(A), (C)-(K) are proper; Items 31(B), (L)-(P) are improper as seeking conclusions of law and the grounds of defendants' legal arguments, discovery or irrelevant information; Item 33 (A) is proper; Items 33 (B)-(N) are improper as seeking discovery or irrelevant information; Item 34(E) is proper; Items 34(A)-(B), (R)-(X) are improper as seeking legal conclusions, the grounds of defendants' legal arguments or discovery; Item 35(A)-(B) are improper as seeking conclusions of law.

In view of the foregoing, it cannot be said that as a whole plaintiff's demand for a bill of particulars is unduly burdensome and oppressive. Accordingly, the branch of defendants' motion seeking to strike plaintiff's demand for a bill of particulars is denied. The motion is granted, however, to the extent that defendants do not have to respond to the following items of the demand and defendants' objections thereto are sustained: Part II, e; Part IV, 31(B), (L)-(P); Part IV, 33 (B)-(N); Part IV, 34 (A)-(B), (R)-(X); Part IV, 35 (A)-(B). Defendants are directed to provide a bill of particulars responding to the remaining items in plaintiff's demand for a bill of particulars within 20 days of this order.

Strike Plaintiff's Demand for Deposition of Defendants and Identified Witnesses on Behalf of Defendants

Defendants also seek to strike plaintiff's Supplemental/Amended Notice to Take Deposition dated August 31, 2012, which noticed defendants' deposition for September 14, 2012. Therein, plaintiff demanded that defendants "designate one or more officers, directors, managing agents, or other persons who testify on your behalf regarding the matters listed in Schedule A which are known or reasonably available to the Defendants." Schedule A lists, among others, the following: insurance policies and coverage available to satisfy defendants' claim for damages; current net worth of defendants; the construction of the premises; building plans for the premises; number of parking spaces permitted; guest parking spaces required by zoning variance; the assignment of parking spaces over the last four years, including to employees; parking spaces rented and "apartment spaces" vacant from October 1, 2010 to present; zoning variance and certificate of occupancy; towing of plaintiff's vehicle, rejection and acceptance of plaintiff's lease renewal and rent payments; the use of parking spaces OF-8 through OF-17 for the past four years; New York State Parking Services Tax returns; present of bedbugs at the premises; and the rental of parking space OF-11. The notice also stated that "the following named persons are persons collectively having the requisite knowledge to answer the areas of questions set out above: JOHN DEROSA, LISA DEROSA, MARGIT DEROSA, BRIDGETTE ROCHA, DONNA VOUGHT, FRANK VILLA, WILLIE VILLA, JOSE VILLA, WILLIAM (BILL) "DOE", BUILDING EMPLOYEE."

Defendants contend that plaintiff does not have the option to make the demand that nine identified people appear for depositions since it is defendants' choice as to who to present for a deposition. Moreover, defendants contend that plaintiff is demanding thousands of documents be produced at the deposition most of which are not relevant to the litigation and the "core" issue of the parking space. Defendants contend that among the improper demands for documents are the following: net worth of defendants; parking space rent rolls for last four years; officers, directors, shareholders and/or partners of defendants for last four years; history of apartments rented and apartments vacant for the last four years; apartment rent rolls for last four years; New York State Parking Service tax returns; preparation and filing of the Offering Plan to convert the premises into a cooperative; physical condition of the premises, including maintenance and repair, water leaks, building violations, elevator conditions and repair; mortgages, title policies; limited partnership and corporate related matters.

Defendants correctly contend that a corporate party has the right to designate the representative who shall be examined (*Trueforge Global Mach. Corp. v Viraj Group*, 84 AD2d 938, 940 [2d Dept 2011]; *Nunez v Chase Manhattan Bank*, 71 AD3d 967, 968 [2d Dept 2010]). However, the court cannot interpret plaintiff's notice to demand the depositions of those persons who plaintiff identified at the end of the notice as having "the requisite knowledge." No where in the notice does plaintiff demand the production of those individuals. Rather, defendants are free to choose a representative or representatives to appear on their behalf for the deposition.

The court also cannot interpret the notice as demanding documents be produced at the deposition. Schedule A of the notice sets forth "matters" about which plaintiff will seek

testimony from a representative of defendant at the deposition, and does not specifically direct the production of documents. Notably, CPLR 3107 does not require a party to set forth the matters upon which the person is to be examined. However, to the extent that plaintiff has set forth an extensive list of “matters” upon which it seeks to examine a representative of defendant in the notice, the court limits the scope of the deposition to the relevant issues in the action at the time of the deposition.

Accordingly, that branch of the motion seeking an order striking plaintiff’s notice for a deposition of defendants is denied. Defendants’ designated representative or representatives shall appear for a deposition on February 25, 2013 at 10:00 A.M. at the office of defense counsel.<sup>7</sup>

In view of the foregoing, it is

ORDERED that the branch of defendants’ motion seeking an order striking the complaint or precluding plaintiff is denied; and it is further

ORDERED that the branch of defendant’s motion seeking an order compelling plaintiff to provide outstanding discovery is granted as follows: Plaintiff shall serve a supplemental response to defendants’ demand for documents and responses to defendants’ other demands for discovery within 30 days of this order. In the supplemental response to the demand for documents, plaintiff shall provide numbered documents, identify which documents are being produced in response to each demand, and organize the documents to correlate to each demand. Plaintiff shall fully respond to each demand, including demands nos. 30-36 and 38-43, 45-47, 49-52. Plaintiff does not have to respond to demands nos. 25-27, 44, or 48. In the event that plaintiff is not claiming lost earnings, plaintiff shall respond to the demands regarding his employment, education, earnings, Workers’ Compensation and income tax returns as “Not relevant insofar as lost earnings are not being claimed by plaintiff,” and plaintiff shall not have to produce documents in response to those demands (demands nos. 40-43, 45-46, 49-50). In the event that, within 20 days of this order, plaintiff discontinues his claim for damages based upon emotional and psychological injuries in writing, plaintiff does not have to provide responses to the document demands regarding his mental or emotional conditions or the treatment of such conditions; and it is further

ORDERED that the court reserves decision on the branch of defendants’ motion seeking an order striking plaintiff’s document demand insofar as defendants failed to specify their objection to each demand to which they object. The parties are directed to provide the court with supplemental submissions detailing their objection to, or the relevance of, each of the document demands to which defendants objected. Any objections to the document demands must be set forth with specificity. Such supplemental submissions shall not exceed five double spaced pages and shall be filed with the court and served so as to be received on or before February 8, 2013 at 12:00 P.M.; and it is further

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<sup>7</sup> The Preliminary Conference Order dated June 18, 2012, provides that the deposition of defendants shall take place at defense counsel’s office.

ORDERED that the branch of defendants' motion seeking to strike plaintiff's demand for a bill of particulars is denied. The motion, however, is granted to the extent that defendants do not have to respond to the following items of plaintiff's demand for a bill of particulars and defendants' objections thereto are sustained: Part II, e; Part IV, 31(B), (L)-(P); Part IV, 33 (B)-(N); Part IV, 34 (A)-(B), (R)-(X); Part IV, 35 (A)-(B). Defendants are directed to provide a bill of particulars responding to the remaining items in plaintiff's demand for a bill of particulars within 20 days of this order; and it is further

ORDERED that the branch of the motion seeking an order striking plaintiff's notice for a deposition of defendants is denied. Defendants' designated representative or representatives shall appear for a deposition on February 25, 2013 at 10:00 A.M. at the office of defense counsel. Plaintiff shall restrict his inquiry at the deposition to relevant issues at the time of the deposition; and it is further

ORDERED that the branch of defendants' motion seeking an award of sanctions and attorney's fees is granted to the extent that defendants are awarded costs and attorney's fees for the present motion in the amount of \$250. Plaintiff shall pay the award to defendants' counsel within 10 days of entry of this order; and it is further

ORDERED that all counsel are directed to appear in the Compliance Part, Courtroom 800, for a conference on February 28, 2013 at 9:30 a.m.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York  
January 28, 2013

  
HON. JOAN B. LEFKOWITZ, J.S.C.

TO: Theresa M. Gugliotta, Esq.  
405 Tarrytown Road  
No. B1151  
White Plains, NY 10607  
Fax: (914) 997-0332

Finger & Finger  
158 Grand Street  
White Plains, NY 10601  
Fax: (914) 949-3608

cc: Compliance Part Clerk