

<b>Spinel v SMJ 210 W. 18th LLC</b>
2014 NY Slip Op 31672(U)
May 8, 2014
Sup Ct, Queens County
Docket Number: 701275/12
Judge: Timothy J. Dufficy
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**ORIGINAL**

**Short Form Order**

**NEW YORK SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS**

**PRESENT: TIMOTHY J. DUFFICY,  
J.S.C.**

-----X  
**VINCENT SPINEL,**  
**Plaintiff,**

**Index No. 701275/12  
Motion Date: 4/10/14  
Motion Cal. No.: 174  
Mot. Seq. No.: 2**

**-against-**

**SMJ 210 WEST 18TH LLC, VERIZON NEW YORK  
INC., 210 WEST 18<sup>TH</sup> LLC, PROPERTY MARKETS  
GROUP INC., JDS DEVELOPMENT LLC and JDS  
DEVELOPMENT CORP.,  
Defendants.**

-----X  
**SMJ 210 WEST 18TH LLC, 210 WEST 18<sup>TH</sup> LLC, and  
PROPERTY MARKET GROUP, INC.,**

**Third-Party Plaintiff,  
-against-**

**WORLD CLASS DEMOLITION CORPORATION**

**Third-Party Defendant.**

-----X  
The following papers numbered EF 33-58, EF 88-96 read on this motion by  
defendants/third-party plaintiffs **SMJ 210 WEST 18TH LLC, 210 WEST 18<sup>TH</sup> LLC,  
and PROPERTY MARKET GROUP, INC.** to vacate the Note of Issue and compel  
discovery.

**PAPERS  
NUMBERED**

Notice of Motion - Affirmation-Exhibits.....	EF	33-58
Affirmation in Opposition - Exhibits .....	EF	88-94
Reply Affirmation.....	EF	95-96

Upon the foregoing papers it is ordered that this motion is decided as follows:

Plaintiff commenced this action seeking to collect damages for personal injuries allegedly incurred as result of falling through a broken cement floor to a lower level while performing alteration and demolition work. On May 21, 2013, a partial deposition of the plaintiff was held with the understanding that a continuation would be necessary due to a recent impleader and further medical treatment. The parties thereafter attended a Compliance Conference, on June 25, 2013, which resulted in a court order on that date, setting forth new dates for the completion of discovery. A further in-person conference before the Hon. Martin E. Ritholtz was held on March 9, 2013, which resulted in a stipulation that set forth dates for the completion of depositions and the filing of the Note of Issue. Despite the forgoing, discovery has not been completed. Plaintiff filed his Note of Issue on February 28, 2014 pursuant to the Court's order dated August 9, 2013. Defendants/third-party plaintiffs now move for an order vacating the Note of Issue, compelling the completion of discovery and extending the parties' time to move for summary judgment.

By the return date of this motion numerous authorizations that were previously outstanding had been provided to the defendants, and only a few remain outstanding at the present time. The movants are not entitled to delay taking the plaintiff's further deposition until each and every authorization has been complied with by third-parties not under the plaintiff's control. Their refusal to take the plaintiff's further deposition until they received all of the records covered by the authorizations was unreasonable, and amounts to a waiver.

Given that movants had the opportunity to depose the plaintiff with regards to the happening of the accident and that the defendants and third-party defendant were deposed before the filing of the Note of Issue, the Court does not find good cause is shown for an extension of time for summary judgment motions and thus that portion of the motion along with the request to vacate the Note of Issue are denied.

As pointed out by our Court of Appeals, "[l]itigation cannot be conducted efficiently if deadlines are not taken seriously, and we make clear again, as we have several times before, that disregard of deadlines should not and will not be tolerated (*citations omitted*)" (*Andrea v Arnone, Hedin, Casker, Kennedy and Drake, Architects and Landscape Architects, P.C.*, 5 NY3d 514 [2005]).

Indeed, “the trial court’s responsibility remains the same as it always has been: to fashion an order consistent with its obligation to bring discovery to an end as quickly as possible” (*Lopez v Imperial Delivery*, 282 AD2d 190, 198-199 [2d Dept. 2001]).

Pursuant to the foregoing, and with the understanding that “[i]f the credibility of court orders and the integrity of our judicial system are to be maintained, a litigant cannot ignore court orders with impunity” (*Kihl v Pfeffer*, 94 NY2d 118, 124 [1999]); it is

**ORDERED**, that the plaintiff’s further deposition shall be completed no later than fifteen (15) days from the date of service of a copy of this order with notice of entry, or it shall be deemed waived; and it is further,

**ORDERED**, that all defendants shall designate examining physicians within ten (10) days after the completion of the plaintiff’s deposition; by physicians of their choosing in the specialties of their choosing; or the aforesaid physical examination shall be deemed waived; and it is further,

**ORDERED**, that the plaintiff’s physical examinations shall be held within fifteen (15) days of such designations. In the event that the plaintiff fails to appear timely, he shall be precluded from testifying at trial regarding his injuries; and it is further,

**ORDERED**, that within fifteen (15) days of the service of the above the plaintiff shall provide movants with the executed IRS authorizations; and it is further,

**ORDERED**, that within fifteen (15) days of the service of the above the plaintiff shall provide movants unrestricted HIPPA compliant authorizations for plaintiff’s treatment with Henry Sardan, D.O. and Kyu-Han Kim; and it is further,

**ORDERED**, that within fifteen (15) days of the service of the above the plaintiff shall provide movants with responses to movants’ post-deposition Notice of Discovery and Inspection, dated June 28, 2013, by providing the following copies of:

- plaintiff’s Workers’ Compensation paperwork provided to his attorney, including but not limited to a C-2 form.
- plaintiff’s updated Workers’ Compensation lien information.
- photographs of the plaintiff’s back taken by his son after the plaintiff’s lumbar spine surgery (Color or laser copies.)
- all photographs of the accident scene taken by, or received by, plaintiff or his counsel, including, but not limited to any photographs received and/or taken by OSHA (Color or laser copies.)
- plaintiff’s OSHA training card(s)

; and it is further

**ORDERED**, that should the plaintiff fail to comply with the above disclosure, he shall be precluded from providing evidence at trial regarding the items for which discovery was ordered but not provided; and it is further,

**ORDERED**, that there shall be no adjournment or change of any of the dates set forth above whatsoever; and it is further,

**ORDERED**, that movants serve the plaintiff with a copy of this Order with Notice of Entry; and it is further,

**ORDERED** that all other applications not specifically addressed herein are denied.

The litigants in this matter shall make good faith efforts to comply with discovery orders in future, to refrain from unilaterally ignoring dates and adding conditions to disclosure directives without judicial fiat; and shall attempt to resolve discovery disputes without resort to the need for Court intervention.

The foregoing constitutes the decision and order of this court.

Dated: May 8, 2014

*TJ*

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TIMOTHY J. DUFFICY, J.S.C.

**FILED**  
MAY 14 2014  
COUNTY CLERK  
QUEENS COUNTY