Abe v New York Univ.
2017 NY Slip Op 32540(U)
November 29, 2017
Supreme Court, New York County
Docket Number: 105985/10
Judge: Lynn R. Kotler

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

KOYA ABE

INDEX NO. 105985/10 and 157465/16
MOT. DATE
MOT. SEQ. NO. 20-26 (2010), 001 (2016)

- v -

NEW YORK UNIVERSITY et al.

The following papers were read on this motion to/for compel, sanctions, quash, vacate NOI, SJ and seal (20-26) and dismiss and sanctions (001)

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits NYSCEF DOC No(s)._____
Notice of Cross-Motion/Answering Affidavits — Exhibits NYSCEF DOC No(s)._____
Replying Affidavits NYSCEF DOC No(s)._____

Both of these actions arise from alleged discrimination, retaliation and a hostile work environment in violation of the New York City Human Rights Law, N.Y.C. Admin Code §8-101, et seq., (the "City HRL"). Plaintiff in both actions, Koya Abe, who is Japanese, a non-US citizen and over forty years old, was an adjunct professor of photography and part-time manager of a photographic facility in the NYU Steinhardt School Department of Art and Art Professions ("Steinhardt School"). By decision/order dated March 7, 2014, the Honorable Richard F. Braun ordered that plaintiff's two related lawsuits, *Abe v. Barton et al.*, Index No. 113150/10, and *Abe v. Giovannelli et al.*, Index No. 152780/12, be consolidated into *Abe v. NYU et al.*, Index No. 105985/10 (the "Original NYU Action"). In consolidating the aforementioned actions, the Court ordered that "the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action."

In the Original NYU Action, plaintiff claims that defendant New York University ("NYU") and the individual defendants discriminated and retaliated against him by not reappointing him as an adjunct teacher and by terminating his part-time darkroom manager position in 2009. The individual defendants in the Original NYU Action are David W. McLaughlin ("McLaughlin"), Nancy Barton ("Barton"), Ken Castronuovo ("Castronuovo"), Joseph Giovannelli ("Giovannelli"), Roger Ho ("Ho"), Mary Brabeck ("Brabeck"), Barbara Cardeli-Arroyo ("Cardeli-Arroyo") and Cathleen Dawe ("Attorney Dawe").

The second action, which is the subject of this decision/order, bears index number 157465/16, and is by plaintiff against NYU and John Sexton ("Sexton"), the President of NYU (the "2016 Action"). This action arises from the same allegations contained in the Original NYU Action, and follows the denial of a motion to amend in the Original NYU Action to add, *inter alia*. Sexton as a defendant to that action (see decision/order dated May 10, 2016 by the Honorable Joan Kenney). In her 5/10/16 decision/order, Justice Kenney denied the amendment because "it was unjustifiably delayed by plaintiff" and "[t]here is no basis presented, in law or in fact, for adding individuals as party defendants where plaintiff was aware of their existence for nearly six years now."

Dated: 11/29/17

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☒ CASE DISPOSED (157465/16) ☒ NON-FINAL DISPOSITION (105985/10)

2. Check as appropriate: Motion is ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER

3. Check if appropriate: ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST

☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

Presently before this court are eight motions, seven of which were brought in the Original NYU Action. In turn, four of these seven motions were brought by plaintiff and are for: discovery and costs/sanctions (020 and 023); to quash a subpoena (021); and to vacate note of issue (022). The remaining three were brought by defendants and are for summary judgment (024 and 025) and to seal (026). Each motion has been opposed by the respective adversary, and with respect to nos. 24 and 25, plaintiff cross-moves for further disclosure as well as costs and sanctions. In the 2016 Action, defendants move to dismiss and for costs and sanctions and plaintiff cross-moves for a preliminary conference and consolidation. All eight motions are hereby consolidated for the court's consideration and disposition in this single decision/order. The court's decision follows.

The court will first consider the motions for summary judgment, since the court's disposition of these motions impacts all other relief requested. Plaintiff opposes both motions on procedural grounds. Plaintiff argues that defendants' motions for summary judgment are defective since defendants failed to annex a copy of the pleadings. This argument is rejected, since this is an e-filed case, and the court has the record before it. Otherwise, there was no prejudice to plaintiff by defendants' failure to annex their answer to the subject motions. Next, plaintiff contends that the defendants' motions for summary judgment are untimely. Note of issue was filed by defendants on October 14, 2016 and the motions were filed on November 14, 2016. Plaintiff points to the part rules of the Honorable Joan Kenney, who this case was previously pending before, and claims that a 30-day time limit applies. The court disagrees.

The preliminary conference order generally provides for when motions for summary judgment may be made. The Original NYU Action was originally assigned to Justice Richard Braun, then transferred to Justice Manuel Mendez, then transferred to Justice Kenney, and now is pending before this court. Plaintiff does not provide a copy of the preliminary conference order or otherwise argue that the motions were brought outside of the time provided therein or any other order of the court. In any event, the motions were brought within 120 days after note of issue was filed (CPLR § 3212[a]), which is this court's general rule, unless the parties agree to a shorter timeline. Finally, to the extent that the motions are late, the court exercises its discretion and will consider them in the interest of judicial economy (see i.e. *Riddick v. City of New York,* 4 AD3d 242 [1st Dept 2004]).

The court now turns to the substantive issues raised in these motions. On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a *prima facie* case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). The party opposing the motion must then come forward with sufficient evidence in admissible form to raise a triable issue of fact (*Zuckerman, supra*). If the proponent fails to make out its *prima facie* case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Plaintiff has asserted claims for discrimination, retaliation and hostile work environment based upon race, national origin, citizenship status and age. While many of the facts are in dispute, the material undisputed facts are as follows. As previously stated, plaintiff was hired by NYU in 1999 as a part-time manager of a photographic facility and sometime thereafter, began teaching photography classes as an adjunct professor. In or about January 2007, plaintiff, represented by a union, and NYU entered into a confidential settlement resolving prior claims plaintiff had made against NYU. Plaintiff claims, in a 102-page affidavit, that after that point, he suffered numerous adverse employment actions. Plaintiff claims that he was denied any opportunity for a promotion, that his responsibilities were gradually taken away from him, that he was assigned less prestigious classes to teach over time, that he was prohibited from

sending emails without prior approval, and was otherwise ostracized and isolated by his supervisors/managers and coworkers.

Defendants, in turn, dispute many of plaintiff's factual claims, through the affidavit of defendant Nancy Barton, plaintiff's supervisor and Department Chair at all relevant times. Defendants claim that in late 2008, NYU decided to cut budgets in response to the Financial Crisis of 2007-8. A directive was issued, top-down, to NYU's schools and departments, to reduce expenses. Barton and defendant Ken Castronuovo, an NYU administrator, decided to terminate plaintiff's employment as a part-time manager of the photographic facility because there was an assistant manager who worked full-time who did most of the work. As for plaintiff's teaching position, defendants claim that in response to the loss of $150,000 in funding, it was decided that Masters of Fine Arts ("MFA") students were going to be allowed to teach introductory art classes, thereby eliminating the cost of seven adjunct faculty members, including plaintiff. Defendants further maintain, based upon the affidavit of Barton, that the aforementioned decisions were not motivated by racial, national origin, citizenship status or age-based animus.

Plaintiff argues that the defendants have not met their burden on these motions by eliminating all triable issues of fact. They contend that Barton's affidavit is not enough to meet their burden, since other parties and non-party employees have personal knowledge of the underlying events. Plaintiff further contends that there are material issues of triable fact and a jury should make credibility determinations.

A *prima facie* case of discrimination requires a showing by the plaintiff that: [1] he is a member of a protected class; [2] he was qualified to hold the position; [3] he was terminated from employment or suffered another adverse employment action; and [4] the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination." (*Forrest v. Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]). Only if these elements are satisfied will there be a rebuttable presumption of discrimination which the employer can then rebut by proving a legitimate, independent, non-discriminatory reason for the adverse employment action (*id.* citing *Ferrante v. American Lung Association*, 90 NY2d 623 [1997]; see also *McDonnell Douglas Corp. v. Green*, 411 US 792 [1973]). If the employer is successful, the burden then shifts back to plaintiff who must prove that the reason being offered is a pretext, and therefore false.

Meanwhile, a racially hostile work environment exists "[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment" (*Forest, supra* at 310 quoting *Harris v. Forklift Sys., Inc.,* 510 US 17 [1993]).

Defendants are entitled to summary judgment dismissing the discrimination and hostile work environment claims. Plaintiff states in conclusory fashion that he suffered adverse employment actions and was harassed because of the protected classes he belongs to. However, there are no facts which support these claims. Plaintiff admits in his affidavit that "[he] believed he was labeled as a troublemaker already because of [his] prior discrimination claims." Based upon plaintiff's recitation of the facts, every alleged demotion, demeaning event, the denial of a promotion and adverse pay decisions which are the subject of this action stems from the complaints he made which led to the confidential settlement in 2007.

That other Caucasian coworkers were treated differently from plaintiff, a sharply disputed fact on this record, is of no moment. Disparate treatment, standing alone, does not give rise to actionable discrimination, absent a showing that such treatment was based upon a protected characteristic (*Mete v. New York State Office of Mental Retardation and Developmental Disabilities*, 21 AD3d 288 [1st Dept 2005]). There are simply no facts on this record that plaintiff suffered an actionable adverse employment action because of his race, national origin, citizenship or age.

Similarly, there are no facts here from which a reasonable fact-finder could conclude that plaintiff's workplace was permeated with discriminatory harassment. Plaintiff makes many claims about conduct which occurred outside the three-year statute of limitations period (Admin Code § 8-502[d]). For exam-

ple, plaintiff claims that a supervisor mispronounced an Asian last name on purpose. Plaintiff claims that there is significant anti-Korean bias present on NYU's campus, and that the number of Asian students at NYU's Steinhardt School have decreased. Claims like these are either too isolated, vague or otherwise not sufficiently directed at plaintiff to establish a hostile work environment claim. Just because plaintiff's work environment was hostile does not make it an actionable hostile work environment absent discriminatory animus (*Forrest v. Jewish Guild for the Blind*, 3 NY3d at 311). Nor are there any facts here which would warrant the application of the continuing violation doctrine (see i.e. *Lozada v. Hook*, 151 AD3d 860 [2d Dept 2017]), so to the extent that plaintiff alleges discriminatory acts outside the statutory limitations period, those claims are unavailing.

As for all the discovery which plaintiff maintains is outstanding, those applications are summarily denied in the exercise of this court's discretion. This case has an incredibly tortured history. Defendants have turned over thousands of pages of documents. Numerous motions have been made to compel discovery, with references and appeals to the Appellate Division. Justice Kenney directed the parties to file note of issue on or before October 14, 2016, which defendants did, approximately six years after this action was commenced. As defendants point out, in opposition to plaintiff's motion to vacate note of issue, there were no material omissions or misstatements of fact made in the that filing. Plaintiff points to various documents he needs, further depositions he wishes to take and more information about his coworkers that is needed to oppose the motion. However, summary judgment is not premature (see generally CPLR § 3212[f]). Indeed, plaintiff seeks information concerning how coworkers were treated, yet there is no evidence on this record of disparate treatment which would warrant any further discovery on this issue (*Mete*, *supra*).

Given the length of time plaintiff has had to engage in discovery, if plaintiff isn't ready for trial at this point, he never will be. There are simply no reasonable justifications offered by plaintiff as to why discovery is not complete at this stage of the litigation. Accordingly, plaintiff's motions for discovery and costs/sanctions (020 and 023) and to vacate note of issue (022) are denied.

Defendants are not, however, entitled to summary judgment dismissing the retaliation claim. To establish a claim of retaliation under the broad standards of the New York City Human Rights Law, Plaintiff must demonstrate: "(1) participation in a protected activity known to the defendant; (2) an employment action disadvantaging the plaintiff; and (3) a causal connection between the protected activity and the adverse action" (*Feingold v. New York*, 366 F.3d 138, 156 [2nd Cir, 2004]). Here, there is no dispute that plaintiff participated in a protected activity. Plaintiff claims that he suffered adverse employment actions which were a result of his complaints of discrimination. The court finds that plaintiff has demonstrated a *prima facie* case of retaliation.

Therefore, the burden shifts to defendants to state a legitimate non-discriminatory reason for the complained-of adverse employment actions. Defendants have not met this burden through Barton's affidavit, since she lacks personal knowledge of some of the claims that plaintiff makes. Defendant's pretextual reasons do not explain away all the adverse employment actions which plaintiff claims he experienced. For example, plaintiff claims that after the 2007 settlement, he was assigned less prestigious classes, which put him in the position in 2009 of teaching introductory classes which defendants ultimately determined could be taught by MFA students. It remains an open question that If plaintiff had not been demoted to teaching introductory art classes, would he have been phased out of teaching in 2009? Otherwise Barton's affidavit raises triable issues of fact and requires credibility determinations which cannot be resolved on this motion for summary judgment. Indeed, an email exchange between Barton and Castronuovo in April 2009, approximately a month before plaintiff was terminated, reasonably supports plaintiff's claims:

> Castonuovo to Barton:
>
> I Just spoke with Roger. He had no issues with the idea of eliminating the Adjunct Dark Room Manager position. Even as early as for this summer.

Barton to Castonuovo:

Ok, I'm going to confirm with the MFA who might be able to teach the class, and then with Barbara Cardelli Arroyo. We have him on the books for a class this summer, I don't know if we should cut that as we may have promised it to him – is there a letter?

xo

N

Castonuovo to Barton:

Just an FYI<

Roger said he already confirmed with Barbara that it was ok. She said especially since it has been 2 years since the suit was settled there is no reason to suspect retribution.

-k

Therefore, defendants' motions for summary judgment are granted only to the extent that plaintiff's discrimination claims are severed and dismissed. Plaintiff's retaliation claims remain for trial. The court now turns to the remaining motions.

First is plaintiff's motion to quash defendants' subpoena served upon plaintiff's attorney, Jennifer Unruh, who is also plaintiff's wife. That motion is granted, since defendants not only filed note of issue but also moved for summary judgment during the pendency of this motion. Therefore, the court finds that defendants have waived their entitlement to such relief, and otherwise that such relief is not warranted insofar as Attorney Unruh represents plaintiff, and has represented plaintiff for the entirety of this action. The court finds defendants' belated claims that they need to depose Attorney Unruh unwarranted on this record. Accordingly, motion sequence number 21 in the Original NYU Action is granted to the extent that the subpoena served on Jennifer Unruh is quashed.

Next, defendants have moved to seal by way of order to show cause. Defendants specifically seek an order sealing certain confidential documents that plaintiff publicly filed in contravention of the Stipulation and Order for the Production and Exchange of Confidential Information, so-ordered by the Court on August 20, 2013 ("Confidentiality Order"). Defendants further seek an order directing plaintiff to comply with the Confidentiality Order, and alternatively striking plaintiff's papers in opposition to defendants' motions for summary judgment. The order to show cause provided for a temporary restraint, signed by Justice Kenney, which Ordered that pending the hearing of the application,

1) All papers filed by plaintiff in connection with his opposition to defendants' summary judgment motions, i.e., ECF Nos. 1297-180 and 1807-1860, shall be temporarily sealed; and

2) plaintiff is directed to comply with the Confidentiality Order, including the provisions concerning the filing of documents containing confidential information...

Plaintiff opposes the motion to seal, arguing that there is no good cause to seal any of his opposition papers and that same were filed in good faith. Plaintiff further argues that there is significant public

interest in the subject litigation and that otherwise some of the subject documents are already in the public domain.

While the court is sympathetic to plaintiff's arguments regarding public interest and the public domain, defendants' production of many of the documents produced during the course of discovery, which are annexed to plaintiff's opposition to the summary judgment motions, was subject to the Confidentiality Order which was so-ordered by Justice Braun following the parties' stipulation and order of reference to determine, pursuant to which JHO Ira Gammerman directed the parties to execute a confidentiality stipulation and that the stipulation be so-ordered. Indeed, the Appellate Division affirmed the determination that a confidentiality stipulation was warranted and the form of the Confidentiality Order.

With respect to the filing of court papers containing confidential information, the Confidentiality Order provides: No provision or paragraph of the Stipulation shall prevent a party's timely filing or serving of any motion papers, including notices, affidavits, and briefs, nor prevent a party from initiating a motion before the Court. However, Confidential Information shall not be filed in Open Court before an application has been made for the Court to receive the Confidential Information under seal.

Plaintiff publicly filed numerous documents that have been marked and/or designated by defendants as confidential pursuant to the Confidentiality Order. Plaintiff's actions in this respect are in direct violation of express terms of the Confidentiality Order. Defendants claim that plaintiff's improperly publicly filed exhibits were attached to the affirmations of Jennifer L. Unruh filed in connection with plaintiff's oppositions to both the NYU Motion and the Individual Defendants' Motion [ECF Nos. 1351, 1596] (the "Unruh Affirmation") and include, but are not limited to, the following exhibits to the Unruh Affirmation: 2, 5, 6, 7, 8, 9, 13, 19, 20, 24, 32, 33, 34, 35, 36, 37, 39, 42, 46, 47, 48, 50, 53, 54, 55, 60, 62, 63, 65, 66, 67, 69, 70, 71, 81, 83, 85, 86, 88, 91, 92, 93, 95, 97, 98, 99, 100, 101, 102, 104, 105, 107, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 130, 131, 144, 145, and 146. In addition, the text of the Unruh Affirmation extensively quotes from these confidential materials. Defendants also claim that confidential documents were publicly filed as attachments to the Affidavit of Koya Abe [ECF Nos. 1351, 1542], including Exhibits 34 and 39 thereto.

Defendants have met their burden of showing that plaintiff violated the Confidentiality Order, that the subject documents warrant sealing, that a sealing order does not prejudice plaintiff and that public interest does not warrant the disclosure that plaintiff now seeks. These records contain non-public financial information, personnel information and other proprietary business information. Plaintiff's flagrant non-compliance with the terms of the Confidentiality Order cannot be condoned by this court. Accordingly, the motion to seal the subject documents is granted to the extent that the parties are directed to settle an order on notice regarding which documents, identified by their NYSCEF Doc No, should be permanently marked sealed. Such order must be narrowly tailored so as to include only those documents which were marked and/or designated by defendants as confidential pursuant to the Confidentiality Order

In motion sequence number 26, defendants also complain about the length of plaintiff's opposition papers to the summary judgment motions. Plaintiff's affidavits, his attorney's affirmation and memorandum of law in opposition are each over a hundred pages. In addition, over a thousand pages are annexed as exhibits to plaintiff's opposition papers.

Plaintiff's protracted opposition papers are an incredible burden upon this court and upon defense counsel as well. However, given the procedural history of this case and the length of time between the submission of these motions and this court's decision, as well as the absence of substantial prejudice to defendants insofar as they were able to submit a reply to the subject papers, the court will overlook plaintiff's extraordinary imposition on this court and defense counsel's resources. Plaintiff is further advised that any future motion papers must be no longer than 25 pages in length absent advance permission in conformance with Uniform Rule 14(b)(1) of the Rules of the Justices, New York County, Supreme Court, Civil Branch.

Finally, defendants' motion to dismiss the 2016 Action is granted based on *res judicata*. The commencement of another action against NYU, again, and Sexton, for the first time, was an impermissible attempt at an end-run around Justice Kenney's 5/10/16 Order denying plaintiff's motion to amend the complaint in the Original NYU Action. Further, all of the claims asserted therein are time-barred. Accordingly, the 2016 Action is dismissed and plaintiff's cross-motion is denied as moot.

Further, defendants' application for costs and sanctions is granted, as well as an order enjoining plaintiff from filing any new frivolous complaints or motions. 22 NYCRR 130-1.1[c] defines conduct as frivolous if:

> (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
>
> (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
>
> (3) it asserts material factual statements that are false.

The court finds that filing the patently meritless complaint in the 2016 Action is the type of frivolous conduct contemplated by the court rule permitting costs and sanctions. Similarly, plaintiff's flagrant violation of the Confidentiality Order was frivolous conduct as well. Plaintiff's conduct is the type of conduct which Part 130 was designed to discourage. Accordingly, defendant is entitled to an award of $500 against plaintiff and $500 against plaintiff's attorney as sanctions, as well as an award for reimbursement of the attorneys fees spent in connection with making motion sequence number 26 in the Original NYU Action and the motion to dismiss the 2016 Action.

The court also finds that plaintiff should be enjoined from filing any new complaints or motions in this court. Public policy generally mandates free access to the courts, however, courts should not permit "the use of the legal system as a tool of harassment" [*Sassower v. Signorelli*, 99 A.D.2d 358, 359 (2d Dep't 1984); see also *Capograsso v. Kansas*, 60 AD3d 522 [1st Dept 2009]]. Here, by filing a frivolous complaint by way of the 2016 Action, plaintiff has engaged in malicious prosecution. Further, in the context of this litigation, plaintiff has clearly misused the judicial system by filing numerous motions for discovery without a real good faith effort to resolve the underlying issues, by filing thousands of pages for this court and plaintiff's adversaries to sift through in contravention to court rules and by flagrantly violating the Confidentiality Order, thereby potentially causing irreparable harm to defendants and unnecessarily increasing defendants' litigation costs. Therefore, plaintiff is enjoined from initiating any further litigation as party plaintiff or filing a motion in the Original NYU Action (Index Number 105985/10) without prior approval of the Administrative Judge of the court in which he seeks to bring a further motion or future action or of the designee of such judge, with the sole exception of appealing the instant decision/order.

CONCLUSION

In accordance herewith, it is hereby

ORDERED that motion sequence numbers 20, 22 and 23 in the Original NYU Action (Index Number 105985/10) are denied in their entirety; and it is further

ORDERED that motion sequence number 21 in the Original NYU Action is granted to the extent that the subpoena served on Jennifer Unruh is quashed; and it is further

ORDERED that motion sequence numbers 24 and 25 in the Original NYU Action are granted to the extent that plaintiff's discrimination claims are severed and dismissed. Plaintiff's retaliation claims remain for trial; and it is further

ORDERED that motion sequence number 001 in the 2016 Action (Index Number 157465/16) is granted in its entirety and the complaint is the 2016 Action is hereby dismissed; and it is further

ORDERED that the cross-motion in motion sequence number 001 in the 2016 Action is denied as moot; and it is further

ORDERED that motion sequence number 26, to seal confidential documents filed by plaintiff in opposition to defendants' motions for summary judgment, is granted to the extent that the parties are directed to settle an order on notice regarding which documents, identified by their NYSCEF Doc No, should be permanently marked sealed. Such order must be narrowly tailored so as to include only those documents which were marked and/or designated by defendants as confidential pursuant to the Confidentiality Order; and it is further

ORDERED that plaintiff is hereby directed to comply with the Stipulation and Order for the Production and Exchange of Confidential Information, so-ordered by the Court on August 20, 2013; and it is further

ORDERED that defendants are awarded $500 as sanctions against plaintiff and $500 against his attorney, Jennifer L. Unruh for engaging in frivolous conduct within the meaning of 22 NYCRR 130-1.1[c]; and it is further

ORDERED that defendants are entitled to reimbursement for their attorneys fees incurred in connection with making motion sequence number 026 in the Original NYU Action and motion sequence number 001 in the 2016 Action. The matter of what amount defendants are entitled to recover from plaintiff for these attorneys fees is hereby referred to a Special Referee to hear and report and, pending receipt of the report and a motion pursuant to CPLR 4403, final determination of that branch of the motion is held in abeyance; and it is further

ORDERED that defendants shall, within 30 days from the date of this order, serve a copy of this order with notice of entry and the accompanying Order of Reference, together with a complete Information Sheet[1], upon the Special Referee Clerk in the Motion Support Office (Room 119M), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date subsequent to the conclusion of the stay fixed above; and

ORDERED that plaintiff is hereby enjoined from initiating any further litigation as party plaintiff or filing a motion in the Original NYU Action (Index Number 105985/10) without prior approval of the Administrative Judge of the court in which he seeks to bring a further motion or future action or of the designee of such judge, with the sole exception of appealing the instant decision/order, and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the parties are directed to retrieve their respective working copies submitted in connection with the subject motions on or before December 21, 2017 at 80 Centre Street, Room 278. If the parties fail to retrieve their working copies on or before that date, same will be discarded by the court.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order of the court.

Dated: 11/29/17
New York, New York

So Ordered:
Hon. Lynn R. Kotler, J.S.C.

[1] Copies are available in Room 119M at 60 Centre Street and on the Court's website at www.nycourts.gov/supctmanh (under the "References" section of the "Courthouse Procedures link).