

Sheaffer v Northern Manhattan Nursing Home, Inc.

2024 NY Slip Op 33836(U)

October 11, 2024

Supreme Court, New York County

Docket Number: Index No. 805322/2021

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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BARBARA J. SHEAFFER, Deceased, by and through,
LANAE TROTMAN, as Administrator of the Estate of
BARBARA J. SHEAFFER,

Plaintiff,

INDEX NO. 805322/2021

MOTION DATE 06/17/2024,
06/07/2024

MOTION SEQ. NO. 001, 002

- v -

NORTHERN MANHATTAN NURSING HOME, INC.,
NORTHERN MANHATTAN NURSING HOME, INC., doing
business as NORTHERN MANHATTAN REHABILITATION
AND NURSING CENTER, NORTHERN MANHATTAN
REHABILITATION AND NURSING CENTER, MOUNT
SINAI HOSPITAL, BARBARA HURWITZ, MICHAEL
RAUSMAN, ABC COMPANIES 1-10 and "JOHN and JANE
DOE(s)," whose names being unknown and fictitious,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45

were read on this motion to/for EXTEND - TIME.

In this action to recover damages for medical malpractice, common-law negligence, gross negligence, statutory nursing home negligence, negligent hiring, and wrongful death, the plaintiff moves pursuant to CPLR 3126 to strike the defendants' answers for their alleged failure to respond to or comply with discovery demands and orders or, in the alternative, pursuant to CPLR 3124 to compel the defendants to respond to or comply with those demands and orders (SEQ 001). The defendant Mount Sinai Hospital (Mount Sinai) opposes the motion, and the defendants Northern Manhattan Nursing Home, Inc., Northern Manhattan Nursing Home, Inc., doing business as Northern Manhattan Rehabilitation and Nursing Center, Northern Manhattan

Rehabilitation and Nursing Center, Barbara Hurwitz, and Michael Rausman (collectively the Northern Manhattan defendants) separately oppose the motion. By stipulation dated June 4, 2024, the plaintiff withdrew the motion insofar as asserted against Mount Sinai. That motion is otherwise denied. The plaintiff also moves pursuant to 22 NYCRR 202.21(d) to extend the time for the service and filing of a note of issue and certificate of readiness (SEQ 002). No party opposes that motion. That motion is granted, and the deadline for the service and filing of a note of issue and certificate of readiness is extended until March 19, 2025.

That branch of the plaintiff's motion which sought to strike the pleadings of the Northern Manhattan defendants must be denied, inasmuch as the plaintiff's counsel failed to establish that he satisfied a condition precedent to the submission of the motion, as set forth in 22 NYCRR 202.20-f(b), which requires that he attest to "having conducted an in-person or telephonic conference, setting forth the date and time of such conference, persons participating, and the length of time of the conference."

The court further notes that, in its most recent status conference order, dated November 3, 2023, it indicated that it would "provide plaintiff with fill-in PDF status conference order form," and directed the plaintiff to "consult with defendants, complete form, and submit it to court at SFC-Part56-Clerk@nycourts.gov, in accordance with schedule set forth below," which fixed a deadline of February 23, 2024 for the submission of the proposed order. That status conference order further provided that, "*[i]f parties cannot agree on terms of compliance conference order, they shall request a compliance conference*" (emphasis added). Rather than submitting a proposed order by that date, or requesting a remote or in-person status conference, at which new deadlines for compliance with discovery directives could have been ordered, if warranted, the plaintiff instead made a motion to compel discovery or strike the defendants' answers on April 16, 2024. This court discourages parties from making discovery motions when a discovery conference, and the concomitant issuance of a discovery conference order, could resolve the issues raised by such motions. In any event, during the pendency of

the motion, Mount Sinai, as well as the Northern Manhattan defendants, responded to most or all of the outstanding discovery demands. The plaintiff thus has not established that the defendants' delay in providing discovery and particulars was willful and contumacious and, consequently, the court denies, on that ground as well, that branch of the discovery motion seeking the imposition of sanctions (see *Butler v Knights Collision Experts, Inc.*, 165 AD3d 406, 407 [1st Dept 2018]; *Tanriverdi v United Skates of Am., Inc.*, 164 AD3d 858, 860 [2d Dept 2018]; *Walter B. Melvin, Architects, LLC v 24 Aqueduct Lane Condominium*, 51 AD3d 784, 785 [2d Dept 2008]; *Chamberlain, D'Amanda, Oppenheimer & Greenfield v Beauchamp*, 247 AD2d 858, 859 [4th Dept 1998]).

To the extent that any discovery remains outstanding, including party depositions, the parties shall submit a proposed status conference order to the court on or before November 6, 2024, in which firm dates for remaining depositions and all other outstanding discovery shall be scheduled.

Accordingly, it is,

ORDERED that the plaintiff's motion to compel discovery or to impose sanctions upon the defendants for their alleged failure to comply with discovery orders (SEQ 001) is denied; and it is further,

ORDERED that the plaintiff's motion to extend the deadline for the service and filing of the note of issue and certificate of readiness (SEQ 002) is granted, without opposition, and that deadline is extended until March 19, 2025; and it is further,

ORDERED that, on or before November 6, 2024, the parties shall submit a proposed status conference order to the court that schedules firm deadlines for the production of all outstanding disclosure, including remaining depositions, by emailing it to the Part 56 Part Clerk.

This constitutes the Decision and Order of the court.

10/11/2024
DATE



JOHN J. KELLEY, J.S.C.

MOTION 001:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	
MOTION 002:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	