

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

DONALD DELK and SANDRA DELK,

Plaintiffs,

v.

Case No: 5:14-cv-469-Oc-32PRL

BANK OF AMERICA, N.A.

Defendant.

ORDER

Pending before the Court is Defendant's Renewed Motion to Compel Mental Examinations of Plaintiffs and to Extend Defendant's Deadline to Disclose Its Expert Psychiatrist's Report of Plaintiffs' Mental Examinations. (Doc. 36). Defendant requests that the Court order Plaintiffs to submit to mental examinations on May 27, 2015, and an extension of its expert witness report deadline to allow Defendant to disclose its expert psychiatrist report within 14 days of the examinations.

The Court previously denied without prejudice a similar motion because Defendant failed to comply with Local Rule 3.01(g). (Doc. 34). In an effort to comply with the Court's Order to clearly articulate Plaintiffs' position on the instant motion, Defendant now states that "Plaintiffs agree to the examination so long as Defendant files a motion to compel the examination and obtains an order granting said motion." (Doc. 36, p. 5). For the sake of expediency, the Court construes this language as a certification that Plaintiffs do not oppose this motion.

Rule 35(a)(1) of the Federal Rules of Civil Procedure provides that the court may order a party whose mental condition is in controversy to submit to a mental examination by a suitably

licensed examiner. Pursuant to Rule 35(a)(2), the Court's order may be made only on motion for good cause and on notice to all parties and the person to be examined, and "must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it."

Here, Defendant argues that Plaintiffs' intentional infliction of emotional distress claims containing allegations of depression and anxiety, coupled with certain statements in their discovery responses, puts Plaintiffs' mental states at issue. Plaintiffs, apparently, do not oppose the examinations. Therefore, Defendant proposes that Dr. Tonia L. Werner, M.D., Co-Chief of the Division of Adult Psychiatry at the University of Florida, conduct both Plaintiffs' mental examinations on May 27, 2015 at Plaintiffs' home.

Thus, upon due consideration, the Court **GRANTS** Defendant's Renewed Motion to Compel Mental Examinations of Plaintiffs and to Extend Defendant's Deadline to Disclose Its Expert Psychiatrist's Report of Plaintiffs' Mental Examinations. (Doc. 36). The deadline is extended to allow Defendant to disclose its expert psychiatrist report within 14 days of the examinations. Plaintiffs shall submit to the examinations.

DONE and **ORDERED** in Ocala, Florida on May 4, 2015.


PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties