

United States District Court
Eastern District of New York

MINUTE ORDER

11cv3764 (DLI)(MDG) OH v. CHOI

This Order sets forth rulings made on the record at a conference on November 20, 2012 granting plaintiff's motion for sanctions (ct. doc 54).

Defendants Young Mi Choi, Young Jin Choi and Kyung Bok Choi canceled their scheduled depositions on less than one business day's notice causing plaintiff to incur \$1,560 in costs for a court reporter and interpreter. Rule 37(d)(3) provides that where a party fails to appear for their deposition "the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(d)(3). Defendants have not offered any justification for their failure to appear at their depositions.

Significantly, this Court has warned defendants several times that further delays would not be tolerated, that their failure to comply with discovery requests could result in sanctions, including a fine, and that a continued failure to comply with discovery could ultimately result in entry of default judgment against them. See ct. doc. 41; minute entry dated 6/26/12; minute entry and order filed on 9/12/12 (ct. doc. 51). Defendants Young Mi Choi, Young Jin Choi and Kyung Bok Choi must each pay sanctions in the amount of \$520 by 12/7/12 to plaintiff's counsel, without prejudice to an application by the defendants seeking joint liability with their counsel.

Defendants are warned that failure to pay sanctions ordered may result in further sanctions, including striking of their answers and entry of default judgment against them. Further, if defense counsel is granted leave to withdraw, discovery will not

be extended to permit defendants to cause further delay in disposition of this action.

SO ORDERED.

Dated: Brooklyn, New York
November 21, 2012

/s/ _____
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE