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

PRESENT: HON. PAUL WOOTEN PART 7
Justice

JAMES COURI,

Plaintiff,

- against -

JOHN SIEBERT and JOHN W SIEBERT, MD. PC.,

Defendants.

INDEX NO. 107240/04

MOTION SEQ. NO. 067

The following papers were read on this motion by the defendant to strike plaintiff's reply to the defendant counterclaims of the defendant pursuant to CPLR 3126.

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits (Memo)

Replying Affidavits (Reply Memo)

Cross-Motion: ☐ Yes ■ No

James Couri (plaintiff) commenced the instant action, *pro se*, on or about June 24, 2004, alleging breach of contract of a promissory note on behalf of the defendants and for $600,000.00 for outstanding payments due on said promissory note that the defendants agreed to pay plaintiff to settle plaintiff's financial fraud claims against the defendant. Defendants filed an answer including counterclaims and issue was joined and the parties commenced discovery. On or about September 15, 2004, the plaintiff amended his complaint alleging $16,335,000.00 in damages on the first cause of action, $600,000.00 on the second cause of action, as well as attorney fees, costs and disbursements. Defendant filed an amended answer with four counterclaims alleging $7,110,532.00 in damages, attorneys fees, costs and disbursements. On or about October 19, 2004, plaintiff filed an amended verified reply to defendants' counterclaims and asserted fifteen affirmative defenses.

Now, after many years of litigation, between at least seven Judges and three Special

Referees, and an interim appeal (*Couri v Siebert* , 48 AD3d 370 [1st Dept 2008]), before the Court is a motion by the defendants (motion sequence 67) pursuant to CPLR 3126, seeking an Order striking plaintiff's reply to defendants' counterclaims and setting this matter down for an inquest as to damages on the grounds of plaintiff's willful and contumacious refusal to comply with the Order issued by the Hon. Michael D. Stallman, entered November 25, 2009 and the Order of the Hon. Paul Wooten, entered September 6, 2010, directing plaintiff to deliver HIPPA-compliant medical authorizations. This is defendants' second such motion requesting similar relief (*see* motion sequence 57). The Court denied the defendants' prior motion (sequence 57), without prejudice, on procedural grounds that they failed to obtain prior consent of the Court before bringing the motion, as required by Justice Beeler's December 12, 2005 Order. Justice Beeler's Order states, in pertinent part, the he was enjoining all parties from commencing or filing any lawsuits or complaints proceedings or motions in any court or administrative body against any other party without prior court authorization (by telephonic conference call to chambers with all parties on the line). The herein motion, which cites additional non-compliance by the plaintiff, complies with Justice Beeler's December 12, 2005 Order.

Plaintiff submits opposition to the herein motion asserting, *inter alia,* fraud, tampering and abuse of court rules by the Court, claiming that the Court improperly restored a case that was dismissed by the Court. The Defendant files a reply stating that the issues raised in the plaintiff's motion were previously raised and decided adversely to the plaintiff.

Plaintiff's procedural objections that the Court improperly restored a case that was dismissed is incorrect. By Order dated October 9, 2009, Justice Michael Stallman granted plaintiff's motion to vacate the Note of Issue (motion seq 40). Justice Stallman held, "It is clear that discovery as to defendants' counterclaims has not been completed. One of the reasons why discovery has not been completed is due to plaintiff's recalcitrance in providing discovery, the reason for which the Appellate Division, First Department struck plaintiff's complaint" (*Couri*

v Siebert, 48 AD3d 370 [1st Dept 2008]). Thus, the case was taken off the trial calender and was not dismissed as the plaintiff asserts.

After a review of the record, defendants' motion is granted due to plaintiff's failure to comply with multiple court orders and abuse of the litigation process, which is evidenced by the procedural posture of this case to be described in great detail below.

BACKGROUND

This case has been marked with acrimony among the parties from the start. After plaintiff filed a motion to reargue (*see* Court order dated February 16, 2005, Justice Beeler) the Honorable Harold Beeler issued an interim order (of the parties stipulation) dated February 17, 2005 as follows:

- Each Party agrees during the course of this litigation (and all related litigation) to refrain from all communication to any third party concerning the substance of this litigation or anything about either party.
- If either party alleges a violation of this order they shall make a conference call to the court, (212-815-0896) in lieu of a motion, and the Court may, if necessary schedule a contempt hearing."
- In the event of any investigation by any entity into the conduct of either party, either side shall move a conference call to the court to attempt to stay such an investigation.

On or about June 6, 2005, Justice Beeler denied plaintiff's motion for summary judgment and motion to dismiss the defendant's counterclaims, and document demands and referred all pre-note discovery, including conferences to a special referee (*see* motion sequence 003 and a second motion sequence 003, dated June 8, 2005[1]; see also motion

[1] Both filed with the Court Clerk on June 10, 2005.

sequences 005[2] and 006[3]). In the same order (motion sequence 005) Justice Beeler also referred the matter of whether the parties were in contempt of the February 17, 2005 mutual restraining order to Special Referee Louis Crespo (Referee Crespo) to hear and report. On July 14, 2005, the matter was referred to Special Referee Crespo. Plaintiff brought yet another summary judgment motion to dismiss before the trial Court on the same grounds as before and sought to stay discovery. Referee Crespo granted plaintiff's request to stay discovery.

On September 7, 2005, Justice Beeler again denied plaintiff's sequential summary judgment motion and motion to dismiss for the same reasons he denied the previous motions in Court orders dated June 6, 2005 and June 8, 2005 (motion sequence 003) and ordered that discovery "shall proceed before Special Referee Crespo notwithstanding the filing of any motions in this action. This matter is referred back to Special Referee Crespo for all pre-trial discovery" (*see* Order dated September 14, 2005, deciding motion sequence 010).[4] Referee Crespo's proceedings were filled with acrimony by the plaintiff against him and there were continued delays by the plaintiff to the proceedings. Plaintiff proceeded *pro se* but constantly alleged that he was too ill to proceed at the hearings or too ill to comply with the Court's discovery orders or Referee Crespo's inquiries.

Thereafter, the acrimony continued among the parties, and Justice Beeler, issued a subsequent order, dated December 12, 2005, which states, in pertinent part, that all parties were enjoined from commencing or filing any lawsuits or complaints proceedings or motions in any court or administrative body against any other party, without prior court authorization by telephonic conference call to chambers with all parties on the line.

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[2] Filed with the Court Clerk on June 10, 2005.

[3] Filed with the Court Clerk on June 13, 2005.

[4] Filed with the Court Clerk on September 14, 2005.

On January 30, 2006, the Court denied plaintiff's motion to reargue the Court's September 7, 2005 decision denying yet another summary judgment motion (motion sequence 012). On February 16, 2006, the Court declined to sign plaintiff's request for leave to reargue the Court's September 7, 2005, decision which denied him summary judgement (motion sequence 015).[5] Special Referee Crespo meanwhile attempted to proceed with discovery, but the parties were still locked in a contentious discovery battle with plaintiff continuously adjourning deadlines or failing to respond to discovery deadlines, citing in part, his undocumented health issues and that he was too ill to appear or participate in discovery (*see* Decisions by Referee Crespo date February 15, 2006 and February 17, 2006). Moreover, plaintiff continued to ignore orders and attempts by the Special Referee to proceed with discovery such that he wrote, "The patience of the Special Referee has been tried and I am left with no option other than the instant order, to wit; that the defendant move forthwith on motion for sanctions and/or dismissal of the complaint due to plaintiff's failure to abide by the Special Referee's rulings and directions" (see Order of Referee Crespo, dated April 25, 2006). Moreover, Referee Crespo issued Discovery Referee Decisions and Orders which were filed with the Clerk on May 16, 2006, June 16, 2006, and June 19, 2006, respectively.

Thereafter, defendant moved to strike the plaintiff's answer for failure to comply with discovery demands, and plaintiff cross-moved to strike the defendants' answer and counterclaims as well as his approximately fourth motion for summary judgment, despite the fact that it was already denied multiple times by Justice Beeler (see motion sequence 017). On February 9, 2007, the Court denied defendants' motion to strike the plaintiff's answer for failure to comply with discovery demands, and denied plaintiff's cross-motion to strike the defendants' answer and counterclaims and denied plaintiff's summary judgment motion as already decided

[5] Filed with the Court Clerk on February 28, 2006.

by Justice Beeler. Such Order was filed with the Court on February 21, 2007. The Defendants' appealed the decision.

On May 25, 2007, Referee Crespo issued his report on Justice Beeler's order of reference, dated February 17, 2005, as to whether plaintiff was in contempt of the Court's restraining order. Plaintiff, among other reasons, sought multiple reasons to delay the proceeding, including seeking time to retain legal representation, which was not done, adjournments for undocumented medical reasons, and plaintiff sought the removal of Referee Crespo (*see* motion sequence 022) and brought a motion for sanctions to strike the defendants answer and counterclaims. Nonetheless, Referee Crespo found the plaintiff in contempt and ordered that he pay $5,000.00 as sanctions and reasonable attorney fees. On January 14, 2008, Justice Stallman denied plaintiff's relief in motion sequences, 019, 020, and 022. On March 5, 2008, Justice Stallman denied plaintiff's motion for reconsideration/modification of the Court's Order dated January 14, 2008.

On February 28, 2008, the Appellate Division, First Department granted Appellant Defendant's motion to strike the complaint for failure to comply with discovery orders of the Special Referee and denied plaintiff's cross-motion seeking summary judgment and striking defendants' answer and counterclaims (*see Couri v Siebert,* 48 AD3d 370 [1st Dept 2008]. The Court held that

> Plaintiff has failed to allege, let alone demonstrate, that he complied with four orders directing him to take necessary measures to enable defendants to obtain the tax returns they sought. Plaintiff's conduct in this litigation has been dilatory, evasive, obstructive, and ultimately contumacious. . . Plaintiff pro se has engaged in frivolous, defamatory and prejudicial conduct that includes multiple actions against Dr. Siebert and his counsel, ex parte communications with the court and the Special Referee, voluminous and unnecessary motion practice, unresponsive papers disparaging the Special Referee, defendants, their attorney and their accountant, and invidious attacks on Dr. Siebert's professional standing by way of communications with his colleagues and other third parties.

> The courts are not obliged to indulge the excesses of a pro se litigant at the expense of decorum, judicial economy and fairness to opposing parties. Proceeding pro se is not a license to ignore court orders, engage in dilatory and obstructive conduct or malign officers of the court.
>
> We find the medical excuse plaintiff proffered for his behavior to be uncompelling (*Couri*, 48 AD3d at 371, 372 [internal quotations and citations omitted]).

The case was referred back to this Court for disposition. After plaintiff's subsequent motions, among others, to remove a subsequent Special Referee, Jack Suter, from overseeing discovery, disqualify defendant's counsel and for summary judgment, which were previously denied by Justice Stallman, by Court Order dated December 24, 2008, the Court referred the matter to Special Referee Leslie Lowenstein (Referee Lowenstein) to supervise the remainder of the discovery in this action.

The plaintiff failed to appear at no less than three scheduled discovery conferences before Referee Lowenstein, again claiming that he sought to continue to represent himself *pro se*, but was too ill to represent himself, attend conferences or complete discovery. He now claims to be in Los Angeles, California seeking cancer treatment (see Court Order dated November 10, 2009, at ¶ 2), yet, his condition, which is undocumented by any properly sworn physician's affidavit, has not deterred plaintiff from making numerous motions and communications to the Court, including what is another summary judgment motion (motion sequence 39) and from commencing another action against the defendants. In order to finally put to rest any questions regarding the integrity of Couri's documented medical condition, the defendants cross-moved to compel the plaintiff's medical examination, and by order dated November 10, 2009, and entered on November 25, 2009, the Court:

> ORDERED, that, upon 20 days notice, plaintiff shall appear for physical examinations before a board-certified cardiologist and a board- certified oncologist (or any other/additional speciality as plaintiff's physical condition warrants, if so determined by the Court) in the vicinity of Los Angeles, California,

who have never previously treated plaintiff, for the purpose of determine if plaintiff is physically unable to participant in this action: and it is further...

ORDERED that within 45 days, plaintiff shall provide defendants with HIPPA compliant authorizations for the release of medical records from any medical provider in the last five years who treated plaintiff for cardiac conditions, melanoma, gastrointestinal issues and spinal issues...

Plaintiff has placed his medical his medical condition into controversy by invoking it as a basis for not appearing at scheduled court appearance and hearing and for not responding to discovery demands. According to a record of proceedings on March 8, 2008 (see Mot Seq. No. 041), Referee Lowenstein apparently recommended to defendants' counsel "seek an order from Justice Stallman. . .to have an independent physician designated by Justice Stallman examine plaintiff to determine whether or not it might be viable for him to proceed" However, it is impractical for the Court to designate a physician, let alone specialists in the state of California.

Accordingly, the Court will direct that both sides attempt to agree on selecting the dean of either a Los Angeles area medical school or the medical director of a Los Angeles area teaching hospital, to designated board certified specialist physician to perform the physical examination of the plaintiff to be performed, *after defendants's medical records.* [emphasis added]. . .

Defendants are entitled to have plaintiff submit to medical examination by appropriate medical specialists for opinions as to whether plaintiff is physically unable to appear at proceedings in this action *(cf. Ferran v Dwyer*, 252 AD2d 753 (3d Dept 1998) (court rejected plaintiff's medical condition as an excuse for failing to serve a complaint in the absence of supporting medical evidence with respect to it's occurrence and/or it effect upon a party).

In addition, Justice Stallman ordered that "The Court realizes that plaintiff is a self-represented litigant. The examinations must take place in the vicinity of Los Angeles, California where plaintiff is allegedly receiving medical treatment" and "Defendant in the First Instance bear the cost of the examination."

Rather than provide HIPPA compliant authorizations within 45-days as required by the Court's November 10, 2009 Order, plaintiff, citing that he was incapacitated due to his many illnesses, proceeded to file a bevy of multiple frivolous and repetitive motions to reargue, a motion to dismiss, and a motion to strike alleging, *inter alia*, fraud, spoliation and continued multiple summary judgment motions all in violation of Justice Beeler's Order dated December

12, 2005 and running a foul of NYCRR 130.1, et seq.[6]

More than nine months after Justice Stallman's November 10, 2009 court order, this Court held a compliance conference on September 10, 2010. Plaintiff still represented he was in California and too ill to attend, so the Court held a telephone conference. Despite the plaintiff's failure to comply with Justice Stallman's November 10, 2009 discovery order, this Court extended additional time for the plaintiff to provide the Court-Ordered HIPPA discovery consistent with Justice Stallman's order dated November 10, 2009 (see Court transcript of the telephone court appearance of September 1, 2010, and the Court's order dated September 6, 2010 and entered on September 30, 2010).[7]

Plaintiff has not complied with the Court's order dated September 6, 2010 after more than seventeen months, and fails to offer a reasonable explanation for his noncompliance. Instead, plaintiff, despite his alleged physical and mental limitations, proceeded to again file on

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[6] Justice Paul Wooten succeeded Justice Stallman in Part 7 on January 1, 2010.

[7] The Court's September 6, 2010 Order read as follows:

> The Court finds that motion sequence 44, (defendants application to strike and other relief due, to the plaintiff submitting affidavits which were not properly notarized) has been delayed by the non-appearance of the plaintiff. Justice Stallman ordered (December 12, 2009) a hearing on this issue and "The hearing must be scheduled after plaintiff has completed court ordered medical examinations to determine if plaintiff is physically unable to participate in this action. (See Decision and Order dated November 25, 2009 to motion seq. No. 39)". Motion sequence 30, (defendants' motion to hold plaintiff in contempt) 32 and 36 are also delayed, because they depend upon the outcome of the motion sequence 44. The plaintiff continues to complain by letters to court and his sworn affidavit and the unsworn affirmation of an out of state doctor that he is too ill to participate or prosecute this case pro se, Yet he has not complied with Justice Michael Stallman's order dated November 29, 20 09 provide defendants with medical authorizations and submit to the defendant independent medical examination."
>
> The plaintiff is granted an additional sixty days from September 1, 2010 to comply with the terms of Justice Stallman's order dated November 25, 2009. *Failure to comply with the terms of this order will subject the plaintiff to an order of preclusion or dismissal.*

or about October 4, 2010, motion sequence 64,[8] which made no references to the September 6, 2010 Court order or the September 1, 2009 court transcript of a telephone conference with the Court. Then, on October 15, 2010, plaintiff filed motion sequence 65 seeking an order, *inter alia,* "Staying all matters referred to in the Decision Order of JSC Wooten dated September 6, 2010 until this Motion and Couri Motion filed Oct. 4, 2010 are decided." Despite multiple orders by the Court, both plaintiff's motions failed to comply with this Court's order dated December 12, 2005, by Honorable Harold J. Beeler, Justice, New York State Supreme Court (which requires that plaintiff seek leave or permission to file any such motions after December 12, 2005) and without compliance to the Rule 130 requirement. This Court found that plaintiff's motions were nothing more than a restatement of many earlier motions, which had already been decided.

Therefore, the herein motion by the defendants (motion sequence 67) to dismiss plaintiff's reply to their counterclaims is granted, pursuant to CPLR 3126. This case is over nine years old and there exists a long and repeated pattern by plaintiff of failing to comply for more than seventeen months to provide Court-ordered disclosure for HIPPA Authorizations and submit to an independent medical exam to determine his alleged medical condition. The Court finds that there is a repeated pattern of noncompliance with its orders directing plaintiff to engage in discovery, and such noncompliance "gives rise to an inference of willful and contumacious conduct" (*Figiel v Met Food,* 48 AD3d 330, 330 [1st Dept 2008], citing *Siegman v Rosen*, 270 AD2d 14 [1st Dept 2000]; *Jones v Green,* 34 AD3d 260, 261 [1st Dept 2006] ["The motion court providently exercised its discretion in dismissing the complaint because of

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[8] Plaintiff sought to: (1) deny and dismiss any and all pending motions in this Case for Movant's failure to comply with the prerequisites, terms and conditions of the 12- 12-05 Injunction; and (2) reverse, vacate, void and set aside any and all flawed decision and orders obtained in this Case by movant obtaining the required permission to proceed pursuant to the conditions of said Injunction. And in addition where said Movant failed, inter-alia, through misrepresentation, fraud, negligence or other misconduct did not disclose the existence and terms of said controlling Injunction to the assigned Justice of the Court.

plaintiffs' long continued pattern of noncompliance with court orders and discovery demands (CPLR 3126), which gave rise to an inference of willful and contumacious conduct]). This long and continued pattern of noncompliance has been willful and contumacious and plaintiff has acted in bad faith (see *Jones,* 34 AD3d at 261; *Figiel,* 48 AD3d at 330; *see also Couri v Siebert,* 48 AD3d 370 [1st Dept 2008]; *Samuel v Macy's Northeast, Inc.*, 26 Misc3d 140[A], 2010 NY Slip Op 50288[U] [Sup Ct, Appellate Term, NY County 2010], *affd* 16 NY3d 891 [2011]). As such, the Court finds the requested relief to strike plaintiff's reply to defendants' counterclaims appropriate (*see Figiel*, 48 AD3d at 330; CPLR 3126; *Goldstein v CIBC World Mkts. Corp.*, 30 AD3d 217 [1st Dept 2006]; *Jones v Green*, 34 AD3d at 261).

In addition, the Court finds that the plaintiff has engaged in an intentional pattern and practice to actively delay the Court proceedings and harass the defendant and the Court by engaging in, among other things, the following bad faith conduct: (1) actively filing successive motions for summary judgment[9], motions to dismiss and motions to reargue all on the same grounds, in violation of the Court's order of December 12, 2005 and the rules; (2) repeatedly violating the Court's Rules, i.e, NYCRR 130.1.1, et seq[10].; the Court's order regarding filing restrictions and discovery; leaving repeated early morning messages (between 4 and 6 a.m.) and leaving lengthy ex parte telephone messages with the Court, all while being critical of the Court. This, in particular, after the Appellate Division struck the plaintiff's complaint for failure to comply with court ordered discovery orders as fully outlined above (*see Couri v Siebert,* 48

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[9] Plaintiff filed at least six summary judgement motions (ie. Motion sequences 003, 10, 26, 46). It is well established that "[m]ultiple summary judgment motions in the same action should be discouraged in the absence of a showing of newly discovered evidence or other sufficient cause" *(Public Service Mutual Insurance Co. v Windor Place Corp.,* 238 AD2d 142, 143 [1st Dept 1997]; *Dillon v Dean,* 170 AD2d 574, 566 NYS2d 350 [2d Dept 1991]; *La Freniere v Capital Dist. Transp. Auth.,* 105 AD2d 517, 518 [3d Dept 1984]; *cf.,* Siegel, 1985 Supplementary Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C3212:21).

[10] All of the plaintiff's motions do not contain the good faith certification as required by NYCRR 130.1.1, et seq., despite repeated Court orders for the plaintiff to follow such procedures.

AD3d 370 [1st Dept 2008]); (3) repeatedly harassing Court personnel, *inter alia*, by requesting the recusal of various Judges and Special Referees, without cause and who disagree with him (plaintiff has requested the Recusal of Justice Stallman, Justice Wooten, Special Referee Jack Suter and Special Referee Louis Crespo); and (4) repeatedly filing of unsubstantiated claims about the actions and integrity of the defendants' counsel, including requests for their removal, fraud, spoliation and criminal conduct.

Accordingly the Court has observed that plaintiff has knowingly engaged in frivolous, unconscionable, malicious or oppressive conduct indicative of harassment and an abuse of the judicial process or vexatious litigation. The Court is not persuaded by plaintiff's arguments that he is proceeding *pro se* and too ill to participate in this litigation. The Court finds that plaintiff while representing himself *pro se*, is a sophisticated, experienced and knowledgeable litigator with significant litigation experience representing himself and has been involved in multiple law suits *pro se*. His experience is evident from the manner in which he has conducted this and other litigation, including the numerous motions he has made in those actions and he has a history of abusive behavior (*see Pavia v Couri*, 19 Misc 3d 1105[A], 2008 NY Slip Op 50563[U] [Sup Ct, NY County 2008], where the Court wrote:

> In this case, given Couri's repetitive and harassing litigation tactics as described above, the October 2004 order properly enjoined Couri from commencing any action arising out of, or in anyway related to, his dispute with the Pavias, including actions against any new defendants without court permission. Moreover, the Appellate Division, in an unrelated case, found that Couri engaged in a similar course of harassing conduct and struck Couri's complaint based on his failure to comply with discovery orders. It wrote that:
>
> Plaintiff pro se has engaged in frivolous, defamatory and prejudicial conduct that includes multiple actions against [defendant] and his counsel, ex parte communications with the court and the Special Referee, voluminous and unnecessary motion practice, unresponsive papers disparaging the Special Referee, defendants, their attorney and their accountant, and invidious attacks on [defendant's] professional standing by way of

communications with his colleagues and other third parties.

Moreover, plaintiff's litigation experience in this matter is bolstered by his involvement in the following other cases: *Pavai v New York State Division of Housing and Community Renewal*, 22 AD3d 399 [1st Dept 2005] (James Couri, Respondent, pro se); *James Couri v Town Village of Harrinton*, New York, 93 CIV. 4393(VLB) USDC, SDNY [1993], (James Couri, plaintiff pro se); *Couri v Westchester Country Club, Inc.*, 186 AD2d 712 [2d Dept 1992]; *Couri v Westchester Country Club, Inc.*, 186 AD2d 715 [2d Dept 1992]; and *Couri v Westchester Country Club, Inc.*, 186 AD2d 711 [2d Dept 1992]).

Additionally, plaintiff has *pro se* litigation experience in the following Supreme Court New York County cases, where plaintiff commenced a lawsuit, *pro se*, and therein at times asserted his health as an issue to the litigation: *James Couri v Lipshie, Sharinn* (KB) 120828/1998; *James Couri v Salvato Cristiano* (FMS) 123836/2002; *James Couri v Thomas Spellane, Gilbride Tusa, Last and Spellane LIC, Russo & Burke, Joe Burke* (BHB) 114759/2004; *James Couri v Cirker City Center* (FHE) 104444/2006 [the Court found all plaintiff's "issues here may be raised before the Arbitrator. Plaintiff may have a *two month respite in order to regain his health*, but must proceed to arbitration, no later than July 7, 2008, as per the Court's order"] [emphasis added]; *James Couri v City of New York* (SKS) 106513/2007; *James Couri, v Kenneth Gomez , George Pavia* (DMG) 108133/2007 ; *James Couri v John Siebert*, (WP) 104661/2008 , (WP) 113512/2008, 103133/2008 (SMD); *James Couri v Richard C. Scharer*, (SWM), 1993L-05059 008421/1984 ; *James Couri v Leona C. Helmsley*, (LRB) 113396/1993; *James C. Couri v Kenneth Steinglass*, 1998I-00827 110547/1995; *James C. Couri v Jay S. Katz* (CH) 604496/1996; *James C. Couri v Harvey C. Kitofsky* (OPJ) 120359/1997; *James C. Couri v Estate of Matilda* (OPJ) 100910/1998; *James C. Couri v George Couri* (OPJ) 109994/1998; *James C. Couri v Todd Romano* (KB) 113796/1998; *James C. Couri v Todd Romano*, TOD (SCM) 101999/1999; *James C. Couri v New York Presbyterian Hospital* (SA) 124097/1999)

James C. Couri v Carlton House, 120029-1995.

Therefore, based upon plaintiff's *pro se* litigation experience, and his actions in this case, the Court also concludes the plaintiff to be a vexatious litigator and the Court herein grants defendants' motion to strike the plaintiff's reply to defendants' counterclaims and other injunctive relief (*see Banushi v Law Off. of Scoot W. Epstein*, 48 AD3d 242 [1st Dept 2013] ["Notwithstanding the public policy requiring free access to the courts, the motion court's order barring plaintiff from initiating further litigation or motion practice against defendants without prior court approval unless he is represented by counsel was justified by plaintiff's continuous and vexatious litigation against defendants"]; *Breytman v Pinnacle Group*, 110 AD 3d 754 [2d Dept 2013]; *Dimery v Ulster Savings Bank*, 82 AD3d1034 [2d Dept 2011]).

CONCLUSION

Upon the foregoing, it is

ORDERED that defendants' motion to strike plaintiff's reply to defendants' counterclaims is granted, and plaintiff's reply to defendants' counterclaim answers is hereby stricken and dismissed; and it is further,

ORDERED that counsel for the defendants is directed to file the Note of Issue on or before January 28, 2014, and upon that filing the Clerk shall set a date upon which an inquest will be held assessing damages, if any, against plaintiff James Couri on defendants' counterclaims; and it is further,

ORDERED that plaintiff is deemed a vexatious litigator and is enjoined from; (1) asserting his medical or physical condition, or medical treatment thereof, or (2) asserting his unavailability being out of state as a reason for non-appearance or non-participation in court procedure before this Court or Special Referee or any Court-appointee thereof; it is further,

ORDERED that this Court re-issues the interim orders by Justice Harold Beeler dated February 17, 2005, and his order dated December 12, 2005, and as such all parties are

enjoined from taking any further action in this matter including, filing any motions, without prior leave of this Court; and it is further,

ORDERED that counsel for the defendants is directed to serve a copy of this Order with Notice of Entry and Notice of Inquest upon plaintiff, the County Clerk, who is directed to enter judgment accordingly, and upon the Clerk of the Trial Support Office.

This constitutes the Decision and Order of the Court.

Dated: 12/24/13

Enter:

PAUL WOOTEN, J.S.C.

Check one: ☐ **FINAL DISPOSITION** ■ **NON-FINAL DISPOSITION**
Check if appropriate: : ☐ **DO NOT POST** ☐ **REFERENCE**