

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

ROMA RAFAEL CASTILLO and CHRISTINA GARCIA-
RODRIGUEZ CASTILLO,

Plaintiffs,

v.

661F REALTY, LLC and BIG APPLE DESIGNERS, INC.,

Defendants.

Index No. 709963/16

**AFFIRMATION IN
OPPOSITION**

MEGAN K. FOSTER, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the truth of the following statements under penalty of perjury:

1. I am an associate with the law firm of CLARK & FOX, attorneys for Defendant 661F REALTY LLC (hereafter "661F Realty") in the above captioned action, and as such, I am fully familiar with the facts and circumstances heretofore had herein.

2. This Affirmation is submitted in opposition to Plaintiffs' motion for an Order (1) compelling defendant to produce Court-ordered discovery and appear for a Court-ordered examination before trial, and (2) for such other and further relief as the court may deem just and proper.

STATEMENT OF FACTS

3. This is an action for personal injuries allegedly sustained by Plaintiff, Roma Rafael Castillo, on or about June 30, 2016, inside the premises located at 661 Flushing Avenue, Brooklyn, New York.

4. On or about August 19, 2016, Plaintiffs commenced this action against 661F Realty LLC and Co-defendant BIG APPLE DESIGNERS, INC. ("BIG APPLE"). A copy of the Summons and Verified Complaint is attached hereto as **Exhibit "A."**

5. Issue was joined by service of an Verified Answer to Plaintiff's Verified Complaint by Co-defendant Big Apple on or about November 18, 2016.

6. Issue was joined by service of an Verified Answer to Plaintiff's Verified Complaint by 661F Realty on or about November 30, 2016. A copy of 661F Realty's Verified Answer is attached hereto as **Exhibit "B."**

THIS COURT SHOULD DISMISS PLAINTIFFS' MOTION TO COMPEL DEFENDANT AS 661F REALTY HAS COMPLIED WITH COURT-ORDERED DISCOVERY

7. To the extent that Plaintiff's motion is directed at 661F Realty (as the motion neglects to identify which defendant(s) allegedly failed to comply), 661F Realty requests that this Court dismiss Plaintiffs' motion to compel defendant in its entirety as against 661F Realty.

8. Defendant 661F Realty submits that it has provided the allegedly outstanding discovery. A copy of 661F Realty's Response to Plaintiff's Demand for a Verified Bill of Particulars as to Affirmative Defenses is annexed hereto as **Exhibit "C."** A copy of 661F's Response to Plaintiff's Combined Demands is annexed hereto as **Exhibit "D."** A copy of 661F's Responses to Plaintiff's Notice for Discovery and Inspection is annexed hereto as **Exhibit "E."**

9. With respect to the directives in the January 12, 2017 Preliminary Conference Order requiring "deposition of plaintiff to be held on April 12, 2017". Please be advised that this office adjourned Plaintiff's deposition as Defendant was still awaiting receipt of Plaintiff's complete medical records. Thereafter the parties attempted to find mutually convenient dates to reschedule Plaintiff's deposition but were unable to do so prior to the June 12, 2017 Compliance Conference in this matter.

10. On July 12, 2017, the parties appeared before Hon. Joseph J. Esposito in the Compliance Settlement Conference Part. On that date, all parties entered into a Compliance Conference Order directing that all parties not yet deposed shall appear for deposition(s) on October 11, 2017.

Defendant 661F Realty has always been willing to forward with depositions on that date. A copy of the July 12, 2017 Compliance Conference Order is attached hereto as **Exhibit "F."**

**THIS COURT SHOULD DISMISS PLAINTIFF'S MOTION TO COMPEL AS
PLAINTIFF'S "GOOD FAITH AFFIRMATION" IS DEFECTIVE**

11. In addition to the deficiencies discussed above, Plaintiff's motion to compel must be denied because it is procedurally defective.

12. Plaintiff's "Good Faith Affirmation" is defective in that it does not indicate the time, place and nature of the consultation and the issues discussed as required pursuant to 22 NYCRR 202.7(c). A copy of Plaintiff's defective Good Faith Affirmation is annexed hereto as **Exhibit "G."**

13. Based on the foregoing, Plaintiffs' motion is frivolous and moot and must be dismissed.

WHEREFORE, Defendant 661F Realty, LLC, respectfully requests that this Court deny Plaintiffs' motion to compel in its entirety as against 661F Realty, LLC, and such other and further relief as this Court may deem just and proper.

Dated: New York, New York
September 25, 2017

Respectfully submitted

BY: Megan K. Foster
Megan K. Foster

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No.:

-----X
ROMA RAFAEL CASTILLO and
CHRISTINA GARCIA-RODRIGUEZ CASTILLO,

SUMMONS

Plaintiff designates Queens
County as the place of trial.

Plaintiff,

The basis of venue is:
Plaintiff's Residence
28-05 83rd Street
Astoria, NY 11102

-against-

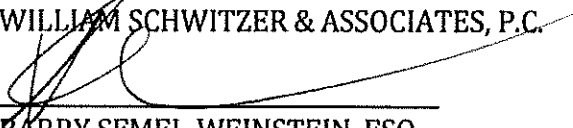
661F REALTY, LLC., and BIG APPLE DESIGNERS, INC.,
Defendants.
-----X

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 15, 2016

Yours, etc.
WILLIAM SCHWITZER & ASSOCIATES, P.C.

By:


BARRY SEMEL-WEINSTEIN, ESQ.
Attorneys for Plaintiffs
820 2nd Avenue, 10th Floor
New York, New York 10017
(212) 683-3800
Our File No. SMSC16-029

TO:
661F REALTY, LLC
661 FLUSHING AVENUE
BROOKLYN, NEW YORK, 11211

BIG APPLE DESIGNERS INC
694 MYRTLE AVE #438
BROOKLYN, NEW YORK, 11205

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