

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

SARMAD BRIKHO,
Plaintiff,

vs.

Case No. 2014-3977-CB

SHANT SHIRINIAN, SHIRINIAN INVESTMENTS,
LLC, VAN 8 COLLISION, INC., GARY
CUNNINGHAM, and GARY H. CUNNINGHAM,
P.C.

Defendants,

and

CHOICE AUTOMOTIVE GROUP, LLC, d/b/a
Chase Automotive Leasing,
Nominal Defendant.

OPINION AND ORDER

Defendants Shant Shirinian ("Defendant Shirinian"), Shirinian Investments, LLC and Van 8 Collision, Inc. (collectively, "Shirinian Defendants") have filed several motions in limine. Plaintiff has filed responses to each of the motions and request the motions be denied.

I. Factual and Procedural History

Between July 6th and 8th 2016, the Shirinian Defendants filed five motions in limine. Plaintiff filed responses to each of the motions. On July 11, 2016, the Court held a hearing in connection with the motions. At the conclusion of the hearing, the Court took the Shirinian Defendants' motion to exclude expert testimony under advisement.

II. Arguments and Analysis

The Shirinian Defendants' motion is based on their contention that Plaintiff

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has not satisfied his duty to supplement some of his answers to discovery requests. The Court will first provide a brief factual background with respect to the discovery requests at issue.

On July 10, 2015, the Shirinian Defendants served Plaintiff with their first set of interrogatories and requests for production. Interrogatories 6 and 7 of that set are at the center of the Shirinian Defendants' instant motion. Interrogatory No. 6 asked Plaintiff to, *inter alia*, identify his experts, and to identify with respect to each expert "the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion." (See Shirinian Defendants' Exhibit A.) In response to Interrogatory No. 6, Plaintiff identified Robert Tunney, CPA, as his only expert. (*Id.*) Further, Plaintiff stated that Mr. Tunney's report and conclusions had already been shared and disclosed to the receiver and parties. (*Id.*)

Interrogatory No. 7 asked Plaintiff to produce, *inter alia*, a copy of his expert(s) curriculum vitae and the report(s) he had prepared. (*Id.*) In response, Plaintiff objected to the request. (*Id.*)

On August 31, 2015, the Shirinian Defendants filed a motion to compel more detailed answers to various requests including interrogatories 6 and 7. On December 9, 2015, the parties entered into a stipulated order resolving the motion to compel ("Stipulated Order"). (See Shirinian Defendants' Exhibit C.)

The Stipulated Order provides, in pertinent part, that:

Interrogatory No. 6- Plaintiff has not received a report from his expert; Plaintiff will supplement his response upon receipt of a report.

Interrogatory No. 7- Plaintiff shall provide Defendant with a copy of his expert Robert Tunney's Curriculum Vitae (CV).

(Id.)

Plaintiff was to comply with the Stipulated Order no later than December 18, 2015. While Plaintiff did provide a copy of Mr. Tunney's CV, Plaintiff has not provided the Shirinian Defendants with a report. Discovery closed on January 27, 2016.

In their motion, the Shirinian Defendant argue that Mr. Tunney should not be allowed to testify at trial as a sanction for Plaintiff failure to comply with the Stipulated Order. In response, Plaintiff contends that Mr. Tunney has not prepared a report and that as a result he is not required to produce anything. In addition, Plaintiff contends that he has sufficiently supplemented his original responses by producing emails, correspondence and objections "demonstrating" his expert's position.

As the Court explained at the July 11, 2016 hearing, the Court interprets the plain and ordinary language of the stipulated order as providing that Plaintiff had not received a report from Mr. Tunney but that he would provide a report to the Shirinian Defendants no later than December 18, 2015. While Plaintiff would like the Court to read a prerequisite into the language of the Stipulated Order that his obligation was only to provide a report to the Shirinian Defendants if one was prepared, the Stipulated Order contains no such qualifying language and the Court will not read such a qualification into the Order. Furthermore, the Court is not persuaded that Plaintiff complied with his stipulation by simply producing documents throughout the litigation. While the Court recognizes that it may not

order an expert to prepare a report under *People v Phillips*, 468 Mich 583; 663 NW2d 463 (2003), it is convinced that Plaintiff should not be allowed to evade providing full and complete answers to interrogatories 6 and 7. Accordingly, the Court is convinced that Plaintiff should be required to, within 14 days of the date of this Opinion and Order, either: (1) identify the (i) subject matter about which Mr. Tunney is expected to testify, (ii) substance of the facts and opinions to which the expert is expected to testify; and (iii) the grounds for each opinion, or (2) produce Mr. Tunney's report if one has been created. Further, should Plaintiff fail to comply with the requirements of this Opinion and Order, the Court is satisfied that Mr. Tunney should not be permitted to testify at trial.

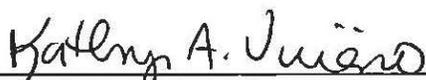
III. Conclusion

For the reasons set forth above, the Shirinian Defendants' motion to exclude expert testimony is resolved as follows: Plaintiff shall, within 14 days of the date of this Opinion and Order either: (1) identify the (i) subject matter about which Mr. Tunney is expected to testify, (ii) substance of the facts and opinions to which the expert is expected to testify; and (iii) the grounds for each opinion, or (2) produce Mr. Tunney's report if one has been created. Further, should Plaintiff fail to comply with the requirements of this Opinion and Order, the Court is satisfied that Mr. Tunney shall be precluded from testifying at trial.

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

DATED: SEP 30 2016



Hon. Kathryn A. Viviano, Circuit Court Judge