

Mota v AkCafé of N.Y. LLC

2024 NY Slip Op 31634(U)

May 10, 2024

Supreme Court, New York County

Docket Number: Index No. 151392/2017

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JUDY H. KIM PART 04

Justice

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NAOMI MOTA, LUZ PERALTA-DURAN,

Plaintiffs,

- v -

AKCAFE OF NEW YORK LLC, AKCAFE OF NEW YORK
D/B/A BAYLON HOOKAH LOUNGE, JAMES DEELU, JAMS
DEELU A/K/A DEELU JAMES, VARGHESE JAMES AKA
JAMES VARGHESE,

Defendants.

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INDEX NO. 151392/2017

MOTION DATE 03/28/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to RESTORE TO TRIAL CALENDAR.

Upon the foregoing documents, plaintiffs’ motion and defendants’ cross-motion are granted to the extent set forth below.

In this action, plaintiffs allege that, as they left the bar of the Babylon Hookah Lounge, in Manhattan, they were followed by another patron, defendant James Deelu, who was intoxicated. They further allege that Deelu caught up with plaintiffs and pushed plaintiff Naomi Mota into a metal fence, resulting in severe facial and dental injuries, and punched plaintiff Luz Peralta Duran, injuring her.

Plaintiffs now move for an order: (1) vacating any default in failing to file the note of issue by the August 22, 2022 deadline set by the Court (See NYSCEF Doc. No. 45) and permitting plaintiffs to file a note of issue; and (2) directing defendants to conduct an independent medical examination (“IME”) of Duran within thirty days of trial or be precluded from conducting an IME.

In support of their motion, plaintiffs' counsel explains they were not able to file a note of issue by the deadline set by the Court because plaintiff had not yet deposed Deelu and defendants had not yet conducted an IME of Duran.

Defendant AKCafé of New York, LLC ("AKCafé") does not oppose an extension of the note of issue deadline but cross-moves for an order directing plaintiffs to produce the following material at least thirty days prior to jury selection: (1) copies of all treatment records of both plaintiffs; and (2) written disclosure of any expert testimony plaintiffs intend to offer concerning their damages. AKCafé also seeks an order directing plaintiffs to produce Peralta-Duran for an IME and produce Mota for an additional IME at least thirty days before jury selection. Defendant asserts that another IME of Mota is necessary because information about her medical treatment, including regarding an examination of Mota by plaintiff's medical expert, was only produced to defendant after Mota's IME.

Plaintiffs consent to all of the discovery sought in AKCafé's cross-motion except to an additional IME of Mota, arguing that as there has been no amendment to the injuries alleged by plaintiff, an additional IME is not necessary or warranted.

DISCUSISON

Plaintiffs' motion is granted to the extent that the note of issue date is extended to September 30, 2024, as there is no dispute that IME of Peralta-Duran remains outstanding. Defendant's cross-motion is also granted without opposition except for that branch of motion to compel an additional IME of Mota, which is denied. Plaintiffs' production of Mota's treatment records after her IME does not support the relief sought (See Jones v Seta, 143 AD3d 482, 483 [1st Dept 2016] ["defendants have not articulated a need for a supplemental physical examination,

as the IME doctor has already examined Jones, documented his or her findings, and can supplement the same upon receipt of the records relating to Jones' prior injuries and treatment”]).

Finally, given the advanced age of this case, the Court emphasizes that the deadline for the discovery discussed above—i.e., the production of all medical/treatment records and Peralta-Duran’s IME—is not, as contemplated by the parties, within thirty days of jury selection, but will be completed imminently, prior to the filing of the note of issue. Expert disclosure will be served in accordance with CPLR §3101(d).

Accordingly, it is

ORDERED that plaintiff’s motion is granted, without opposition, and the note of issue deadline is hereby extended to September 30, 2024; and it is further

ORDERED that AKCafé of New York, LLC’s cross-motion is granted, without opposition, except that AKCafé’s request for a further independent medical examination of Naomi Mota is denied; and it is further

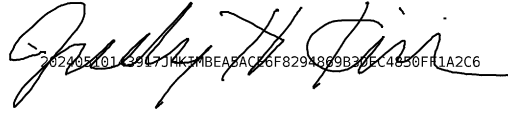
ORDERED that parties are to meet and confer on or before May 17, 2024 to set a date for Luz Peralta-Duran’s independent medical examination, which independent medical examination to be held on or before July 19, 2024; and it is further

ORDERED that all medical records for Peralta-Duran are to be produced to defendants on or before June 17, 2024; and it is further

ORDERED that the parties to appear for status conference in Part 4 (80 Centre Street, room 308) on **July 26, 2024, at 10:00 a.m.**; and it is further

ORDERED that, given the advanced age of this case, the parties may not adjourn the foregoing dates except with permission of the Court, in advance, upon good cause shown.

This constitutes the decision and order of the Court.



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5/10/2024

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE