

**Bustos v Lenox Hill Hospital**

2005 NY Slip Op 30022(U)

June 14, 2005

Supreme Court, New York County

Docket Number:

Judge: Eileen Bransten

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

PRESENT: Eileen Bransten  
*Justice*

PART 6

Bustos, Maria

INDEX NO. 107925/04

MOTION DATE 5/17/05

MOTION SEQ. NO. 01

MOTION CAL. NO. 01

- v -

Lenox Hill Hosp.

The following papers, numbered 1 to 3 were read on this motion to/for compel

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1

2

3

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying memorandum.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**FILED**  
JUN 28 2005  
NEW YORK COUNTY CLERK'S OFFICE

Dated: 6-14-05

Eileen Bransten  
**EILEEN BRANSTEN J.S.C.**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART SIX

-----X  
MARIA PILAR BUSTOS and  
CESAR BUSTOS,

Plaintiffs,

-against-

Index No.:107925/04  
Motion Date: 05/17/05  
Motion Seq. No.: 01

LENOX HILL HOSPITAL, PEDRO  
SEGARRA, M.D., and DR. "JOHN"  
CHAN (first name being fictitious and unknown),

Defendants.

-----X  
PRESENT: EILEEN BRANSTEN, J.

Pursuant to CPLR 3103, defendants Lenox Hill Hospital ("Hospital") and Pedro Segarra, M.D. ("Dr. Segarra") move for a protective order prohibiting plaintiffs Maria Pilar Bustos ("Mrs. Bustos") and Cesar Bustos ("Mr. Bustos") from photographing and videotaping the Hospital delivery site. Plaintiffs oppose this motion.

Background

In this medical malpractice action – commenced on May 24, 2004 – plaintiffs allege that defendants negligently performed a delivery on Mrs. Bustos on April 1, 2003, which proximately caused her to sustain symphysis pubis diastis (separation of the pubic bones). Defendants' Affirmation in Support of Motion ("Aff."), at ¶ 3. Specifically, Mrs. Bustos alleges that defendants used a McRoberts maneuver on her whereby they pushed her thighs up on to her abdomen and then spread her legs outward. Plaintiffs' Affirmation in

Opposition (“Opp.”), at ¶ 2. She claims that defendants did this with such excessive force that they caused her pubic symphysis to separate 9.5 centimeters. *Id.*

On March 28, 2005, plaintiff served a Demand for Entry Upon Land seeking to enter the Hospital for the purposes of “surveying, photographing or recording by motion pictures or other visual recording devices in the property building or any specifically designated object or operation thereon.” Aff., Ex. F, at 1. On April 5, 2005, defendants objected to this demand. Aff., Ex. G, at 1.

Dr. Segarra and the Hospital now move for a protective order prohibiting plaintiffs from photographing or videotaping the delivery site. Aff., at ¶ 2. They argue that plaintiffs are not making a claim of defective equipment, and therefore, have no need to inspect the place where the alleged injury occurred. Aff., at ¶ 4. Furthermore, they assert that the delivery site is a confidential and private area and the intrusion of plaintiffs’ equipment would “interrupt the flow of [the Hospital’s] labor and delivery department.” Aff., at ¶ 13.

Plaintiffs oppose the protective order, asserting that the layout and size of the delivery room is relevant to their claim of medical malpractice. Opp., at 2.

Analysis

CPLR 3101 mandates that there “shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” The Court of Appeals has explained that the words “material and necessary” are to be liberally construed “to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” *Allen v. Crowell-Collier Pub. Co.*, 21 N.Y.2d 403, 406–07 (1968). Thus, the “CPLR requires the disclosure of all evidence relevant to the case and *all information reasonably calculated to lead to relevant evidence.*” *See*, David Siegel, *New York Practice*, § 344, at 525 (3d ed.1999) (emphasis added).

Furthermore, CPLR 3120(1)(ii) provides that any party may serve a notice of discovery “to permit entry upon designated land or other property in the possession, custody or control of the party or person for the purposes of inspecting, \*\*\* photographing or recording by motion pictures \*\*\*\*.”

Nonetheless, the Court has discretion to limit discovery and issue a protective order to prevent “unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice.” CPLR 3103; *Pomeranz v. Pomeranz*, 99 A.D.2d 407 (1st Dep’t 1984); *Byck v. Byck*, 294 A.D.2d 456, 457 (2d Dep’t 2002). A disclosure demand is palpably improper if it seeks confidential or private information that does not appear to be relevant to the case. *Titleserv, Inc. v. Zenobio*, 210 A.D.2d 314, 315-16 (2d Dep’t 1994).

Plaintiffs' request to photograph and videotape the delivery site is reasonable. They are looking for important information relating to the layout of the delivery room to assist in their understanding of what happened during the delivery. The information is certainly relevant to plaintiffs' claim that the delivery was negligently performed. Defendants must allow plaintiffs entry into the Hospital to photograph and videotape the delivery room because, for example, the size and the shape of the room might be probative as to whether defendants were able to push Mrs. Bustos' legs over her abdomen and spread them widely.

The Court disagrees with defendants' claim that the size and layout of the delivery room is irrelevant. To be discoverable, material need only be sought in good faith and be probative of issues at trial. *Allen v. Crowell-Collier Publishing Co.*, 21 N.Y.2d, at 407. Defendants cannot themselves decide what is relevant to proving plaintiffs' case. *See, e.g., Orner v. Mount Sinia Hosp.*, 305 A.D.2d 307, 310 (1st Dep't 2003).

Additionally, defendants are incorrect in asserting that plaintiffs' request improperly seeks confidential or private information. Plaintiffs do not seek to videotape a woman giving birth in the delivery room; they are merely requesting permission to videotape and photograph an empty delivery room. Defendants present no evidence that this discovery would invade the privacy of any Hospital patient or reveal any confidential information.

Accordingly, it is

ORDERED that defendants' motion for a protective order is denied; and it is further

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ORDERED that defendants are to permit plaintiffs to enter the Hospital and videotape and photograph the delivery room within 30 days of this Decision and Order; and it is further

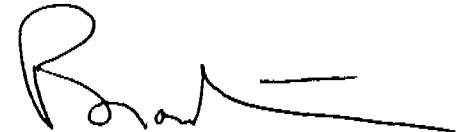
ORDERED that all parties are to appear on July 12, 2005 at 9:30am for a pre-trial conference.

This constitutes the Decision and Order of the Court.

Dated: New York, NY  
June 14, 2005

ENTER

  
Hon. Eileen Bransten



**FILED**

JUN 28 2005

NEW YORK  
COUNTY CLERK'S OFFICE