

**Alexis v City of New York**

2007 NY Slip Op 30092(U)

March 13, 2007

Supreme Court, Queens County

Docket Number: 0010617

Judge: Kevin J. Kerrigan

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable Kevin J. Kerrigan  
Justice

Part 10

-----X  
JOSEPH ALEXIS and CHARMAINE ALEXIS,

Index No. 10617/03

Plaintiffs,

Motion

Date: 03/06/07

-against-

Calendar No. 1

THE CITY OF NEW YORK, NEW YORK CITY  
SCHOOL CONSTRUCTION AUTHORITY, THE  
BOARD OF EDUCATION and DeMATTIS  
CONSTRUCTION CORP. ,

Motion Seq. No. 6

Defendants.

-----X

The following papers numbered 1 to 10 read on this motion by defendants to preclude plaintiffs from offering evidence or, in the alternative, to vacate the note of issue and allow further discovery.

Papers  
Numbered

Notice of Motion-Affirmation-Exhibits.....1-5  
Affidavit in Opposition-Exhibits.....6-8  
Reply Affirmation.....9-10

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Motion by defendants for an order precluding plaintiffs from offering evidence at trial of Joseph Alexis' MRI taken on May 16, 2006, or, in the alternative, vacating the note of issue, striking this case from the trial calendar and allowing defendants to conduct a further deposition and further physical examination of Joseph Alexis is denied.

Defendants are well aware of plaintiff's alleged cervical spine injuries consisting of disc bulges and herniations. Plaintiff had an MRI of his cervical spine taken on March 3, 2005. The MRI report indicated, inter alia, disc bulges at the C3-4 and C4-5 regions and herniations at the C5-6 and C6-7 regions. A second supplemental bill of particulars was served on September 16, 2005, wherein plaintiff alleged herniations of the

the C5-6 and C6-7 discs and bulging of the C3-4 disc with impingement. A supplemental deposition of plaintiff was held on January 5, 2006 and a supplemental IME was conducted on January 20, 2006.

A second MRI was taken of plaintiff's cervical spine on May 15, 2006. That MRI report indicated the same injuries but added that there was impingement associated with the C5-6 and C6-7 herniations. Defendants' counsel does not deny being in receipt of the MRI reports and authorizations to receive the films.

Defendants' counsel contends that since the 2006 MRI states that there is impingement, it discusses a new injury entitling defendants to a further deposition of plaintiff and a further physical examination of plaintiff. Counsel's argument is without merit and borders on the frivolous.

Defendants' counsel cites no cases, and this Court is unaware of any, for the proposition that nerve root impingement constitutes a new injury separate and apart from herniation and bulging. Plaintiff has not introduced a new spinal injury heretofore not revealed, for example, a cervical fracture, which would merit further examinations. The injuries reported in the second MRI report are precisely the same ones reported in the first MRI report. They both mention, inter alia, disc herniations at the C5-6 and C6-7 discs and bulging at the C3-4 discs. Although impingement is not the inevitable sequella of disc herniations and bulges, such is a natural manifestation of disc injury. It is disingenuous of defendants' counsel to argue that impingement constitutes a different category of injury.

Defendants have had more than ample opportunity to conduct discovery with respect to plaintiff's alleged cervical spine injuries and have, in fact, conducted voluminous discovery. There is no reason why defendants' physician cannot examine the MRI film and report and draw his own conclusion as to whether there is nerve root impingement. Defendants' motion, at this juncture, arguing that they are entitled to preclusion or a vacatur of the note of issue and a further deposition and physical examination of plaintiff merely because a second, redundant, MRI report stated that there was impingement is an abuse of court process.

Accordingly, the motion is denied.

It is further ordered, sua sponte, that defendants' attorney shall pay to plaintiffs' counsel \$100.00 representing the costs of this motion, pursuant to CPLR 8202 within 10 days of service of a copy of this order with notice of entry. Moving counsel shall demonstrate proof of payment of said costs at the time of trial.

Dated: March 13, 2007

[\* 2 ]  
\_\_\_\_\_  
KEVIN J. KERRIGAN, J.S.C.