

Brown v City of New York

2007 NY Slip Op 31654(U)

May 25, 2007

Supreme Court, New York County

Docket Number: 0101426/2005

Judge: Marilyn Shafer

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

PRESENT: MARILYN SHAFER
Justice

PART 8

Brown, D

INDEX NO. 101426105

- v -

MOTION DATE _____

City

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

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

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

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is denied, pursuant to the attached decision.*

FILED
JUN 18 2007
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/25/07

[Signature]
MARILYN SHAFER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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

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

PRESENT: HON. MARILYN SHAFER
Justice

PART 8

DERRICK BROWN,

Plaintiff,

INDEX NO. 101426/05

-against-

CITY OF NEW YORK, KATLAN ASSOCIATES,
INC., AND BRITTON REALTY CO., INC.

Defendant.

The following papers were read on this motion to reargue:

Papers Numbered

Notice of Motion to Reargue (with Exhibits)	1
Affirmation in Opposition	2
Reply Affirmation	3

Pursuant to CPLR §2221, defendants City of New York, Katlon Associates, and Britton Realty, Inc. (“defendants”) move to renew and reargue this court’s prior order which denied disclosure of files and records (“the records”) maintained by the Administration for Children’s Services. Plaintiff Derrick Brown (“Brown”) opposes on grounds of privilege, that the records concern non-parties to the action, and are in any event neither material nor relevant.

In the underlying claim, Brown alleges that between 1986 and 1990 he suffered lead poisoning from exposure to and ingestion of lead at two locations owned and/or managed by defendants. Brown states that as a result, he suffered cognitive and behavioral impairments including attention deficit disorder, hyperactivity, and a decreased I.Q. Defendants seek the records on grounds that they might reveal alternative causes of Brown’s impairments.

Discussion

CPLR § 2221 (d) (2) provides that a motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion” (*Pahl Equipment Corp. v Kassis*, 182 AD2d 22 [1st Dept 1992]). The purpose of reargument is not to give an unsuccessful party another opportunity to reargue an issue already decided or to present new arguments (*Foley v Roche*, 68 AD2d 558 [1st Dept 1979]).

Here, defendants reiterate the relevance of the records, and claim that by redacting them or through a confidentiality agreement, the privacy of non-parties can be protected. In support, defendants submit the affidavit of Dr. Thomas Boland, a child psychologist who states that “serious child abuse and/or child neglect can result in long-term mental health problems and can result in long-term mental health problems and can impact school performance and behavioral development” (Notice of Motion, ¶13).

Based on a full review of the unredacted records and motion papers, this court finds no reason to disturb the underlying denial of disclosure. The records relating to Brown’s mother and sister are privileged, which privilege cannot be defeated by the claim that they are material and necessary (*Muniz v Preferred Assoc.*, 189 AD2d 738, 739 [1st Dept 1993] citing *Sibley v Hayes 73 Corp.*, 126 AD2d 629, 630 [2nd Dept 1987]). The affidavit of defendant’s expert, without more, is no more than conclusory. Furthermore, since the records do not commence until Brown

was eleven, by which time he had been diagnosed with the impairments at issue, these records are without probative value to defendant's pursuit of the initial source of Brown's impairments.

Accordingly, defendants' motion to reargue is DENIED.

This reflects the decision of this court.

Dated: 5/25/07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Marilyn Shater
Duplicate Original
MARILYN SHATER

FILED
JUN 18 2007
COUNTY CLERK'S OFFICE
NEW YORK