

Novas v Zuckerman

2007 NY Slip Op 31678(U)

June 18, 2007

Supreme Court, New York County

Docket Number: 0101518/2005

Judge: Stanley L. Sklar

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

PRESENT: Hon. Stanley L. Sklar
Justice

PART 29

Index Number : 101518/2005

NOVAS, BEATO

vs

ZUCKERMAN, JOSEPH D.

Sequence Number : 001

COMPEL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1-7
8-14
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1-19
Notice of Motion/ Order to Show Cause / Affidavits / Exhibits ...
No time for cross motion / aff - 1 - 2 - 3 - 4 - 5

Answering Affidavits / Exhibits 3

Replying Affidavits 1

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION DECIDED IN ACCORDANCE WITH
THE ATTACHED MEMORANDUM DECISION.

FILED

JUN 19 2007

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/18/07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

[* 2]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 29

-----X
BEATO NOVAS

Plaintiff,

Index No.: 101518/2005

-against-

JOSEPH D. ZUCKERMAN, M.D., DR. AHN and
HOSPITAL FOR JOINT DISEASES ORTHOPAEDIC
INSTITUTE,

Defendants.
-----X

SKLAR, J.:

Plaintiff moves for an order compelling defendants to provide a copy of records pertaining to plaintiff, permitting plaintiff to file a late Notice of Medical Malpractice Action, nunc pro tunc and their setting this case down for a preliminary conference. Defendants cross move for an order dismissing the complaint for the failures to serve bills of particulars, provide discovery responses and to supply a certificate of merit.

The motion and cross motion are granted only to the following extent:

1. Since it appears that plaintiff has now paid for the reproduction cost of the defendants' records and since defense counsel represents that the records are in the process of being duplicated, defendants shall within ten days of service of a copy of this order with notice of entry serve plaintiff with a copy of those records.
2. Plaintiff shall serve and file a certificate of merit within ninety days of receipt of those records.
3. Within thirty days of receipt of those records plaintiff is directed to serve a bill of particulars as to any defendant who has served a demand for a bill of particulars.

4. Within thirty days of service of a copy of this order with notice of entry plaintiff, to the extent that he has not already done so, shall fully respond to defendants' demands for authorizations dated April 14, 2005 and March 28, 2006.

5. Upon proof that he has complied with the preceding paragraph, plaintiff may promptly renew the branch of his motion seeking leave to file a late Notice of Medical Malpractice Action.

6. Plaintiff does not at this point in the litigation have to respond to defendants' demands for CPLR 3101(d) notices. The timetable for providing CPLR 3101(d) statements shall be set forth in the court's pre-trial order.

7. Within fifteen days of service of a copy of this order with notice of entry plaintiff is directed to respond to defendants' supplemental damages demand.

8. Within thirty days of service of a copy of this order with notice of entry plaintiff shall respond to defendants' April 14, 2005 notice to produce, providing within that thirty day period those items which plaintiff believes are discoverable, plaintiff's affidavit as to items claimed to be nonexistent and plaintiff's counsel bases for withholding any of the other requested items.

9. Within thirty days of service of a copy of this order with notice of entry, plaintiff shall fully respond to defendants' demands for witnesses, statements of the parties, and for any collateral sources, other than for Aetna. Regarding statements plaintiff only responded as to defendant Zuckerman, and as to witnesses plaintiff responded that the witnesses were "to be provided," but evidently never provided names or addresses.


10. The scheduling of depositions, any I.M.E.'s and the exchange of medical reports shall be addressed and set at the preliminary conference to be held on September 20,

2007, 9:30 a.m., courtroom 212, 60 Centre Street, Manhattan.

11. Since plaintiff has not formally moved for relief with respect to discovery allegedly outstanding from defendants any such issue shall be raised at the preliminary conference.

The foregoing constitutes the order and decision of the court.

Dated: June 18, 2007
60 Centre Street
New York, NY



J.S.C.

FILED
JUN 19 2007
COUNTY CLERK'S OFFICE
NEW YORK