

Cutler v Verizon N.Y., Inc.

2008 NY Slip Op 30041(U)

January 2, 2008

Supreme Court, New York County

Docket Number: 0102887/2006

Judge: Emily Jane Goodman

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : I.A.S. PART 17

-----X
MARILYN CUTLER, as Administratrix of the Estate
of DAVID ALLEN CUTLER

Plaintiffs,

Index No. 102887/06

-against-

VERIZON NEW YORK, INC. AND
VERIZON COMMUNICATIONS, INC

Defendants.

-----X
EMILY JANE GOODMAN, J.S.C.:

FILED
JAN 10 2008
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion for a protective order compelling Defendants to submit to a deposition before Plaintiff and delaying Plaintiff's deposition until 30 days before trial, is granted, as special circumstances exist for the requested relief.

Plaintiff, who resides in Florida, seeks a protective order because she is in a wheelchair and is oxygen dependent and has difficulty traveling. She notes that she was not a witness to her son's electrocution or death, and can only give testimony as to pecuniary loss. She further agrees to answer interrogatories as well be deposed.

Defendants oppose the motion citing their right to priority and claiming that delaying Plaintiff's deposition until 30 days before trial would disadvantage them because they need time to prepare a defense and "the pecuniary loss claim is that which most contributes to the total settlement of jury value of a case."

The Court of Appeals has noted that litigants are protected against the

[3]

unnecessarily onerous application of discovery statutes by judicial discretion, which balances that need for discovery against the burden borne by the opposing party (see Kavanagh v Ogden Allied Maint. Corp., 92 NY2d 952 [1998]). The Court finds that Defendants would not be disadvantaged by granting the relief sought and that Plaintiff would face substantial hardship if the relief is not granted. Because Plaintiff has agreed to both interrogatories and a deposition, Defendants can obtain information on the pecuniary loss claim well in advance of trial by serving interrogatories. This is not a case of a deposition complicated by issues of liability as Plaintiff was not a witness to her son's electrocution or death. Based on interrogatory responses, the case can be valued from a damages prospective. Moreover, even if it could not be valued until Plaintiff's deposition, the case can nonetheless settle prior to trial. Thus, Defendants' argument boils down to the fact that Plaintiff seeks to deviate from the general order of discovery.

Plaintiff is wheel chair bound and oxygen dependant. Plaintiff's physician further explains in his affidavit that Plaintiff suffers from complex partial seizures, had a partial stroke, and suffers from multiple other medical problems rendering travel a hardship. Accordingly, it is appropriate to grant a protective order to limit Plaintiff's travel to New York due to her ill health (see e.g., Hoffman v Kraus, 260 AD2d 435 [2d Dept 1999] [protective order granted precluding plaintiff from taking deposition of elderly, sick, man in New York in favor of oral or written questions in his country of residence]).

It is hereby

ORDERED that the motion is granted to the extent that (1) the depositions of Defendants shall occur within 20 days from receipt of a copy of this Decision and Order and (2) Plaintiff's deposition is delayed until 30 days before trial; and it is further

ORDERED that Defendants may serve on Plaintiff interrogatories of reasonable length but may not adjourn their depositions on the basis that they have not yet served interrogatories or because Plaintiff has not yet responded thereto.

This constitutes the Decision and Order of the Court.

Dated: January 2, 2008

ENTER:



J.S.C.

EMILY JANE GOODMAN

FILED
JAN 10 2008
NEW YORK
COUNTY CLERK'S OFFICE