

**Kouril v SLS Residential, Inc.**

2010 NY Slip Op 33583(U)

December 3, 2010

Sup Ct, Nassau County

Docket Number: 16243/09

Judge: Karen V. Murphy

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK  
TRIAL TERM, PART 17 NASSAU COUNTY**

**PRESENT:**

**Honorable Karen V. Murphy**  
**Justice of the Supreme Court**

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**CYNTHIA KOURIL, PRO SE,**

**Plaintiff(s),**

**Index No. 16243/09**

**-against-**

**Motion Submitted: 11/17/10  
Motion Sequence: 005, 006**

**SLS RESIDENTIAL, INC. a/k/a THE SLS GROUP,  
DR. DAVE MOORE, DR. ALFRED BERGAMAN,  
DR. JOSEPH SANTORO, SLS STAFF JOHN DOES  
1-20, and JACQUELINE MARSHALL,**

**Defendant(s).**

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The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....XX
- Answering Papers.....XX
- Reply.....X
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Motion by plaintiff, Cynthia Kouril, *pro se*, pursuant to CPLR §3103, providing for a conditional order regulating the use of information and documents obtained by the defendants from the plaintiff is denied.

Motion by defendant, Jacqueline Marshall, for an Order, pursuant to CPLR §3126, precluding the plaintiff upon the trial herein from introducing any evidence as to the matters in respect to each and every particular demanded by the defendant and/or dismissing the plaintiff's complaint is also denied.

This action sounds in medical malpractice, negligence (only asserted against defendant Jacqueline Marshall), and gross negligence. Plaintiff, Cynthia Kouril (“Kouril”), is an attorney who resides on Long Island. She is a pro se litigant in this matter. The SLS Defendants, namely SLS Residential, Inc. a/k/a The SLS Group, Dr. Alfred Bergman and Dr. Joseph Santoro, together with defendant Dr. Dave Moore provided medical and psychiatric treatment and care to non-party Evan Marshall. Defendant, Jacqueline Marshall, is Evan Marshall’s mother.

In this action, plaintiff, Kouril, claims that she suffered injuries as a result of a motor vehicle accident when non-party Evan Marshall drove his motor vehicle off the road “deliberately” attacking her on August 17, 2006 at 8:15 a.m. while she was completing an 8 mile fitness walk in Glen Cove, New York. Approximately a half an hour after her attack, Marshall attacked and murdered defendant Jacqueline Marshall’s neighbor, Denice Fox. Kouril claims that Marshall was suffering from a “mental illness” and that as the SLS Defendants and Dr. Moore were aware of his violent propensities, they knew or should have known that he should not have been allowed out of their facilities in Brewster, New York unaccompanied by a mental health professional, if at all (Complaint, ¶¶ 20-27, 28). Kouril also claims that Jacqueline Marshall breached her duty to the public and to the plaintiff in disregarding her adult son who she knew to have a violent and/or dangerous propensity to cause injury and damage on her property. Plaintiff alleges that the disregard of this dangerous condition was the proximate cause of her injuries.

The various defendants have served certain discovery demands on the plaintiff including a demand for a Bill of Particulars, a Notice to Produce Authorizations, a Demand for Party Statements and a Demand for a Certificate of Merit. Plaintiff has objected to said discovery demanded by the defendants on the grounds that her compliance thereto will be contingent upon counsel for the defendants’ agreeing to sign her proposed Stipulation and Confidentiality Order.

In relevant part, plaintiff’s proposed Confidentiality Stipulation and Order provides that:

Should defense counsel desire to disclose the content of any document or information received from plaintiff to their respective clients, they will first notify plaintiff in writing and afford plaintiff 10 days to object to such disclosure or such parts of such disclosure is made be appropriate.

It further provides:

Should plaintiff and defense counsel fail to reach agreement about disclosure documents during the initial 10 day period, defense counsel will afford plaintiff an

additional five court days, to serve a motion for a protective order or such other order as may prohibit disclosure of the documents or information the disclosure of which plaintiff objects to.

Counsel for the defendants have objected to this proposed agreement on the grounds that it significantly impairs their ability to discuss material aspects of the litigation with their clients.

Subsequently, by prior Order of this Court dated May 13, 2010, this Court, *inter alia*, directed the plaintiff to furnish the defendants with a response to their Amended Demand for a Bill of Particulars. Plaintiff has yet to comply with this Court's previous directive.

Upon the instant motion, plaintiff seeks a protective order conditioning and regulating the use of disclosure obtained by the defendants and their counsel from the plaintiff. Plaintiff argues that this Court must prevent the release of her personal information to non-party Evan Marshall and his family. She claims that as "Evan Marshall will be eligible for parole during the course of [her] expected lifetime" and that "[i]f released he presents an ongoing danger to [her], and possibly, [her] loved ones" (Kouril Aff., ¶4). She states that if Evan Marshall is released, she may be forced to relocate and that "[a]n attempt to disappear from him would be made infinitely more difficult and onerous if he were to possess personal information such as date of birth, social security numbers, names and addresses of my relatives and the like" (*Id.* at ¶6). In an effort to shield the information and documents obtained by counsel for the defendants from the defendants themselves, plaintiff submits that a protective order conditioning and regulating the use of this information obtained by counsel for the defendants must be issued. Defendants oppose plaintiff's motion. Further, defendant Marshall also separately moves, pursuant to CPLR §3126, for an Order, precluding the plaintiff upon the trial herein from introducing any evidence as to the matters in respect to each and every particular demanded by the defendant and/or dismissing the plaintiff's complaint. Notably, plaintiff does not oppose Marshall's motion herein.

CPLR § 3103 provides that the court may, on motion of any party or of any person from whom discovery is sought, make a protective order denying, limiting, conditioning, or regulating discovery. Protective orders are designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts (*Westchester Rockland Newspapers, Inc. v. Marbach*, 66 A.D.2d 335, 413 N.Y.S.2d 411 [2d Dept., 1979]). The burden of proving the need for a protective order to preclude discovery is on the moving party (*Parker v. Parker*, 2 Misc.3d 484, 773 N.Y.S.2d 518 [Sup. Ct. Nassau 2003]). When the moving party has properly specified his or her objections, the burden shifts to the other party to demonstrate that the exceptions are unavailable (*Quirino v. New York City Transit Authority*, 60 Misc.2d 634, 303 N.Y.S.2d 991 [Sup. Ct. Queens

1969)). In this case, plaintiff, as the moving party, has failed to carry her burden of proving her need for a protective order to preclude the most basic discovery demands, especially the Amended Demand for a Bill of Particulars.

As counsel for the defendants have demonstrated to this Court, plaintiff's argument that this Court must prevent the release of her personal information to Marshall and his family is significantly undermined by the abundance of information that is already available to the public on the internet, including her e-mail, home and work address, photograph, and biography. It is well settled that an individual has no expectation of privacy with respect to materials that person has displayed to the public (*Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 [1967]). Plaintiff's attempt at now seeking a protective order on the grounds that the release of her personal information may cause her future harm is simply not supported in light of the fact that she has repeatedly publicized private information about herself on the internet, and has made no effort to remove the personal information that has already been publicized.

The issue in this case is whether the plaintiff's need to keep her most basic information private is compelling enough such that she can prohibit counsel for the defendants from sharing discovery materials with their respective clients. This Court finds that it is not. Plaintiff has failed to advance any reasonable cause for her to believe that the defendants might use the information sought for a purpose other than in the furtherance of the pending litigation (*cf. Conti, Kraus & Martin Auto Body Corp. v. Allstate Ins. Co.*, 47 A.D.2d 918, 367 N.Y.S.2d 45 [2d Dept., 1975]).

Further, by placing her physical condition in controversy by commencing this personal injury action, it is plain that the defendants are entitled to all discovery including her date of birth, address and social security number, which possibly could lead to evidence including all medical treatment, all prior medical treatment, providers and diagnostic tests (*see e.g., Rothstein v. Chihee Huh*, 60 A.D.3d 839, 875 N.Y.S.2d 250 [2d Dept., 2009]; *see also, Abdalla v. Mazl Taxi, Inc.*, 66 A.D.3d 803, 887 N.Y.S.2d 250 [2d Dept., 2009]).

In her reply affidavit, plaintiff attempts to circumvent her futile argument in support of her motion by arguing that "[c]ontrary to the strawman arguments advanced by the Defendants in their opposition papers, my motion does not keep to 'keep [my] name and identity a secret,' that would be absurd." Rather, she argues in her reply affidavit that "the information [she is] trying to keep confidential is the information that could be used to locate [her] if [she] tried to drop out of sight and information that would make it easy to connect [her] with [her] family members" (*Id.* at ¶8). She maintains that she has "consciously" tried to keep this information confidential for her entire adult life (*Id.*). This argument, however, is equally unavailing.

The fact is that the information she is refusing to provide is the very basic and straightforward name, date of birth and address which, as established above, is already available in the public forum by her. Moreover, plaintiff has failed to establish how this already public information would make it any more easier “to connect her with her family members” than it is now.

Therefore, in light of the fact that there is no legal basis for the issuance of a protective order, plaintiff’s motion is denied in its entirety.

Defendant Marshall’s motion, unopposed by the plaintiff, for an Order pursuant to CPLR § 3126, precluding Kouril from introducing any evidence as to the matters in respect to each and every demand by the defendants upon the trial of this matter is also denied.

CPLR § 3126 is the statutory predicate for penalizing a party for refusing to comply with an order to disclose. It provides, in pertinent part, that:

If any party . . . refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or
2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or
3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

At this juncture, however, given the denial of plaintiff’s motion for a conditional order, this Court herewith denies defendant Marshall’s motion without prejudice to renew.

Plaintiff is herewith directed, pursuant to CPLR § 3041 et. seq. and CPLR Article 31, to supply to the defendants, a response to the outstanding discovery demands of the

defendants herein within twenty (20) days of service of a copy of this order on the plaintiff via regular mail.

The foregoing constitutes the Order of this Court.

Dated: December 3, 2010  
Mineola, N.Y.

*Karen V. Murphy*  
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J. S. C.

**ENTERED**

DEC 29 2010

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**