

<b>Popovici v Shirzadnia</b>
2010 NY Slip Op 33891(U)
July 15, 2010
Sup Ct, NY County
Docket Number: 117636/09
Judge: Alice Schlesinger
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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NINA POPOVICI,

Plaintiff,

Index No.117636/09

**DECISION  
AND ORDER**

-against-

ALFRED SHIRZADNIA, DDS., IAN P.  
PASCH, D.D.S, and HERALD SQUARE  
DENTAL, P.C., d/b/a HERALD SQUARE  
DENTAL, THE DENTURE CENTER,

Defendants.  
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SCHLESINGER, J.:

In a compliance conference on June 30, 2010, two discovery issues were raised: whether defendants could compel plaintiff to use a Romanian interpreter at her deposition, and whether defendant could take temporary custody of plaintiff's dentures for inspection. To resolve these issues, the Court directed all counsel to submit letters setting forth their respective positions. The Court received letters from Cheryl Zimmerli, counsel for defendant Herald Square Dental, and letters from Mitchell Lidowsky, counsel for plaintiff Nina Popovici, and from Michael Sullivan, counsel for defendant Alfred Shirzadnia, D.D.S. The first was dated July 8, 2010, the other two followed on July 9, 2010. The Court also received and reviewed the transcript of the partial deposition of Nina Popovici, the plaintiff, which had begun but was abruptly ended by defense counsel on June 22, 2010.

Plaintiff's Deposition Should Continue Without a Translator

Counsel for the defendants claim that Ms. Popovici, whose first language is Romanian, is not sufficiently fluent in English to continue her deposition unassisted and

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therefore seek to compel her to resume her deposition via a Romanian translator. They point to several places in the deposition transcript where Ms. Popovici allegedly had trouble understanding questions posed to her and gave responses that were sometimes incomplete or conflicting. Although the deposition was scheduled to continue through the end of the day, after a brief consultation at noon defendants' counsel abruptly ended Ms. Popovici's deposition over her counsel's strong objection.

Counsel for the plaintiff contends that his client is sufficiently fluent to conduct her deposition in English, and because this is the language plaintiff prefers to use while being deposed, he wants his client's deposition to continue without the use of a translator. He contends that the inconsistencies in his client's answers are due to difficulties she had recollecting certain facts and events about which she was questioned. As these events took place many years ago, counsel asserts that a limited recollection is not unusual.

This Court agrees with the plaintiff. Ms. Popovici is fifty-six years old and came to the United States in 1996. She is a US Citizen and converses in English on a daily basis. While the transcript makes clear that Ms. Popovici has some difficulty speaking English (as is to be expected from someone who learned the language later in life), a careful review reveals that she is undoubtedly sufficiently fluent to continue her deposition in English. For example, when Ms. Popovici was questioned about the dental bridge at issue, she answered coherently and specifically. Although her English was not grammatically perfect, the meaning behind her answers was perfectly understandable. (Transcript at pp 44-46.)

Sometimes, Ms. Popovici's confusion seemed to be due to the slightly formal

way defense counsel phrased some questions. For example, when attempting to determine if Ms. Popovici lost teeth due to an accident, defense counsel referred to "external force" in a way that seems to have confused Ms. Popovici.

Generally, though, Ms. Popovici's confusion seemed mainly due to her inability to remember events that transpired long ago. Defense counsel contended in their letters that Ms. Popovici gave conflicting reports about how many teeth she was missing before moving to the United States. (Transcript at pp 21-22, 25, 36-38.) Having reviewed the transcript, this Court attributes the inconsistency to a problem of memory, not to a problem of English fluency.

Furthermore, defense counsel offer no case law to support their position that they can compel Ms. Popovici to use a translator. The use of a language translator poses the risk that the precise meaning of questions asked or answers given will be lost when the information conveyed is mediated through an interpreter. Ms. Popovici is aware of, and accepts that, the consequence of her decision to proceed without a translator is that she cannot later claim not to have understood a question because her native language is Romanian.

Defense counsel improperly "busted" the deposition without contacting this Court for a ruling on the issue. Therefore, if the scheduling of a second day will cause Ms. Popovici to miss an additional day of work where she loses pay, defendants must compensate her in an amount not exceeding \$100.00 upon the submission of an affidavit to that effect from Ms. Popovici.

When reviewing the transcript, the Court noticed that plaintiff's counsel interrupted the deposition at several points to confer privately with his client, rephrase

questions asked by opposing counsel, and offer his own answers to questions posed to the plaintiff. This conduct should not be continued as it is intrusive, improper, and is inconsistent with counsel's position that his client fully understands English. All counsel are reminded to observe the governing rules when this deposition continues. See Uniform Rules of the Trial Courts, Part 221.

Defendants May Not Take Possession Of Plaintiff's Dentures

Defendants' application to take possession of plaintiff's dentures is denied. Defendants have no right to – and consequently may not – take temporary possession of plaintiff's dentures. As plaintiff's counsel notes in his letter, plaintiff will allow for a full inspection to be done at an agreed upon location. At that time, the dentures can be fully examined, inspected and photographed without any risk of loss or damage to the dentures.

Accordingly, it is hereby

ORDERED that the defendants' application to compel plaintiff to continue her deposition with the use of a Romanian translator is denied; and it is further

ORDERED that defendants' application to take possession of plaintiff's set of dentures is denied.

Dated: July 15 , 2010

**JUL 15 2010**

**FILED**

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*Alice Schlesinger*  
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J.S.C.  
**ALICE SCHLESINGER**