

**Sniffin v Finkelstein**

2011 NY Slip Op 31146(U)

April 26, 2011

Supreme Court, Nassau County

Docket Number: 20212/08

Judge: Randy Sue Marber

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

**JUSTICE**

**TRIAL/IAS PART 18**

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ANN SNIFFIN,

Plaintiff,

-against-

Index No.: 020212/08  
Motion Sequence...01, 02  
Motion Date...03/09/11

HARVEY FINKELSTEIN, M.D.and PAIN  
CARE OF LONG ISLAND, PLLC.,

Defendants.

\_\_\_\_\_  
X

- Papers Submitted:
- Notice of Motion (Mot. Seq. 01).....x
- Affirmation in Opposition.....x
- Reply Affirmation.....x
- Notice of Cross-Motion (Mot. Seq. 02).....x
- Affirmation in Opposition.....x
- Reply Affirmation.....x

Upon the foregoing papers, the Defendants motion, brought pursuant to CPLR § 3124 (Mot. Seq. 01), seeking to compel the Plaintiff to provide outstanding authorizations and discovery<sup>1</sup>, and the Plaintiff's Cross-motion, (Mot. Seq. 02) seeking an Order: 1) quashing the Defendants' subpoena seeking the non-party deposition of Julie Beatrice; 2)

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<sup>1</sup>The parties' attorneys entered into a "So-Ordered" Stipulation dated March 9, 2011, whereby it was agreed that the Plaintiff would be provide the Defendants authorizations for certain medical records and the Court would determine if any non-medical authorizations requested should be provided.

compelling the Defendant to respond to the Plaintiff's discovery demands; 3) compelling the Defendant to respond to questions he refused to answer in his depositions; and 4) granting the Plaintiff leave to amend the Complaint to add additional allegations and a Cause of Action of Negligent Infliction of Emotional Trauma<sup>2</sup>, are decided as hereinafter provided.

The Plaintiff commenced this action seeking to recover monetary damages for personal injuries allegedly sustained as a result of the Defendants' medical malpractice, specifically alleging that the Defendant utilized contaminated syringes in the care and treatment of the Plaintiff.

In the instant action, the Plaintiff's and the Defendants' counsel entered into a Certification Order, dated July 12, 2010, certifying that the case was ready for trial. However, the parties were unable to resolve various discovery related issues and the instant motions were permissively filed.<sup>3</sup> The Court has extended the Plaintiff's time to file a Note of Issue until May 20, 2011.

The Defendant contends that the Plaintiff has put into issue her financial situation by alleging that the Defendants have caused the Plaintiff to live a lesser quality of life. Specifically, the Defendants now seek discovery relating to the Plaintiff's bank accounts and credit cards as well as her various forms of income including benefits received from New

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<sup>2</sup>The parties' attorneys entered into a "So-Ordered" Stipulation dated March 9, 2011, whereby it was agreed that a non-party deposition of Julie Beatrice would be held on April 7, 2011, that the Defendants' counsel would provide Plaintiff's counsel with discovery related to other cases regarding the Defendant and that the Court would rule on the Plaintiff's request to amend the Complaint.

<sup>3</sup>See "So-ordered" Stipulation dated July 12, 2010 relating to the instant motions.

York State Unemployment. The Defendants argue that the Plaintiff's employment history is discoverable and the Plaintiff should provide authorizations for information from former clients who dismissed her as their accountant.

In opposition to the Defendants' application, the Plaintiff's counsel argues that the Defendants' request for authorizations relating to the Plaintiff's finances are too broad and beyond the scope of permitted discovery pursuant to CPLR Article 31. He asserts that the Defendants' counsel was permitted to question the Plaintiff, at her deposition, about information related to her finances and as such, no further information is needed. As for the Defendants' request for an authorization for the Plaintiff's unemployment records and records of the Plaintiff's clients, the Plaintiff's counsel states "these demands are too broad and beyond the scope of CPLR Article 31 and palpably improper".

Pursuant to CPLR § 3101, there shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action. The purpose of disclosure proceedings is to advance the function of trial, to ascertain truth and to accelerate disposition of suits. The CPLR directs full disclosure of all relevant material. The test is one of "usefulness and reason". CPLR § 3101 (a); *Allen v. Crowell-Collier Publishing Co.*, 21 N.Y.2d 403 (1968); *Andon v. 302-304 Mott Street Assocs.*, 94 N.Y.2d 740 (2000); *Hoenig v. Westphal*, 52 N.Y.2d 605 (1981) (pre-trial discovery is to be encouraged, limited only by the test of materiality of "usefulness and reason"); *Spectrum Sys. Int'l. Corp. v. Chemical Bank*, 78 N.Y.2d 371, 376 (1991). In light of the applicable law, the information sought by the Defendant satisfies the test of materiality of "usefulness and reason" as it is necessary in

order to defend the Defendants against the claims of the Plaintiff. However, the demand for authorizations to obtain information related to the Plaintiff's current and/or former clients is improper. Those individuals and/or companies have a right of privacy and their financial information is not discoverable. The Defendants are not precluded from attempting to obtain the requested information from another source and/or by other means.

The Court will next address the Plaintiff's Cross-motion, pursuant to CPLR § 3025, seeking leave to amend the Complaint to add additional allegations and a Cause of Action of Negligent Infliction of Emotional Trauma.

In support of the application, the Plaintiff's counsel argues that according to CPLR 3025 (b), leave to amend should be freely granted, absent prejudice or surprise resulting from the delay. This section is to be liberally construed to permit pleadings to be amended. The statute itself uses the words "freely given" and such is the policy of the courts of this State in the absence of laches, undue prejudice and unfair advantage. *Leutloff v. Leutloff*, 47 Misc.2d 458 (1965). Such a decision should be left to the sound discretion of the trial court. *Koeth v. Koeth*, 309 A.D.2d 786 (2nd Dept. 2003). In exercising its discretion, the trial court should consider how long the amending party was aware of the facts upon which the motion was predicated, whether a reasonable excuse for the delay was offered and whether any prejudice resulted from the delay. *Id.*; *See also Caruso v. Anpro, Ltd.*, 215 A.D.2d 713 (2nd Dept. 1995).

Plaintiff's counsel asserts that the proposed additional cause of action is grounded on the same negligence theory as asserted in the original Complaint. He asserts

there will be no disadvantage to the Defendants as there is still ongoing discovery. Lastly, the Plaintiff's counsel alleges that the discovery that the Defendant, Dr. Finkelstein, breached infection control during the course of discovery in this proceeding, is the reason the Complaint is to be amended at this time to conform to the facts.

In opposition to the Plaintiff's request to amend the Complaint, the Defendants' counsel asserts that the Defendants are surprised by the "new and distinct" cause of action. He claims that the facts surrounding this case were not only known by the Plaintiff's counsel at the time of the commencement of the action, but were commonly known by the general public due to the publicity surrounding it contained in Newsday. He claims that the Plaintiff offers no statement or evidence as to "new" discoveries that led to the motion to amend the Complaint nor any "excuses" for the delay. He asserts that the Plaintiff has been alleging emotional trauma since the inception of the action. Additionally, the Defendants' counsel asserts that the proposed amendment is "palpably insufficient" to state a cause of action.

This Court finds that the proposed amended Complaint does not have merit and is legally insufficient. Further, in its opposition, the Defendants establish they will be prejudiced as a result of the Court permitting the amended Complaint. The delay is significant so as to warrant denial of the requested relief. As this case was certified, all discovery was compliant contrary to the Plaintiff's counsel's claim that discovery is ongoing. As such, the branch of the Plaintiff's Cross-motion seeking leave to amend her Complaint, is hereby **DENIED**.

Accordingly, it is hereby

**ORDERED**, that the Defendants' Motion, pursuant to CPLR § 3124, seeking to compel the Plaintiff to provide non-medical authorizations, is hereby **GRANTED (Mot. Seq. 01)** to the extent limited herein; and it is further

**ORDERED**, that the Plaintiff's Cross-motion, pursuant to CPLR § 3025 (b), seeking leave to amend its Complaint to assert an additional cause of action, is hereby **DENIED (Mot. Seq. 02)**.

This constitutes the decision and order of this Court.

DATED: Mineola, New York  
April 26, 2011



Hon. Randy Sue Marber, J.S.C.

**ENTERED**  
APR 27 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE