

Maloney v St. Peter's Hosp. of Albany

2012 NY Slip Op 30028(U)

January 11, 2012

Supreme Court, Columbia County

Docket Number: 1388-11

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT
ELEANOR D. MALONEY

COUNTY OF ALBANY

Plaintiff,

DECISION and ORDER
INDEX NO.: 1388-11
RJI NO.: 01-11-105667

-against-

ST. PETER'S HOSPITAL OF ALBANY,
DBA ST. PETER'S HOSPITAL

Defendant.

Supreme Court Albany County All Purpose Term, January 9, 2012
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Tabner, Ryan and Keniry, LLP
Attn: Tracy L. Bullett, Esq.
(Attorney for Plaintiff)
18 Corporate Woods Blvd.
Albany, New York 12211

Thorn, Gershon, Tymann & Bonanni, LLP
Attn: Mia D. VanAuken, Esq.
(Attorney for Defendant)
5 Wembley Court
New Karner Road
Albany, New York 12212-5054

TERESI, J.:

This is a medical negligence and malpractice action. A discovery dispute has arisen between the parties and they had attempted to resolve that dispute by conferring, which was not successful.

The plaintiff moves for an order pursuant to CPLR §3124 to compel disclosure of insurance information, the names of hospital employees responsible for plaintiff's care and treatment and disclosure of policies, procedures, protocols, rules and regulations maintained by defendant pertaining to defendant, its agents, servants and/or employees. The defendants oppose the motion.

The plaintiff claims that the cause of action arose on May 18, 2009, when the plaintiff attempted to ambulate from her hospital bed to the bathroom after her alleged request for assistance using the hospital call bell system went unanswered. As she ambulated, she fell causing injuries including a broken hip. The action was filed on March 14, 2011.

On April 19, 2011, the plaintiff served upon the defendant Demand for Discovery and Inspection dated April 18, 2011, which is the subject of this motion. In the demand, the plaintiff requests copy of items numbered in Paragraphs as follows:

- “15. The table of contents of any and all office, departmental and/or hospital rules and regulations, in effect for the 3 years prior to May 18, 2009, on May 18, 2009, and after May 18, 2009 and continuing through to the present.
16. The table of contents of any and all office, departmental and/or hospital protocols manuals which may pertain to the care and treatment of patients, in effect for the 3 years prior to May 18, 2009, on May 18, 2009 and after May 18, 2009 and continuing through to the present.
17. The table of contents of any and all policy and/or procedure manuals in effect on May 18, 2009 which may pertain to the procedures performed on and /or the services, care and/or treatment rendered to the plaintiff, Eleanor D. Maloney, from May 18, 2009 and continuing through to the present.
18. The table of contents of any and all customs or practices manuals in effect on May 18, 2009 and which may pertain to the procedures performed on and/or the services, care and/or treatment rendered to the plaintiff, Eleanor D. Maloney, from May 18, 2009 and continuing through to the present.”

The plaintiff's counsel maintains that the foregoing documents are material and relevant to the claims in this case. Defendant objects to the production of the foregoing documents upon the grounds that it is overly broad, unduly burdensome, and is not limited in scope. The Court notes

that the foregoing demands are not limited to any particular department, speciality, protocol, procedures, or disciplines practiced in the hospital. Further, the demands seek documentation extending beyond the date of the accident, May 18, 2009, for a period of time 2 ½ years later. That is, up to the present time, without demonstrating to the Court the relevancy of present day protocols, policies, etc.

I find that the demands of the plaintiff in respect to the requested table of contents, to be overly broad, unspecific, and too general. The plaintiff has failed to demonstrate to the Court how the table of contents of the all inclusive demand for all protocols in policies within the hospital from May 18, 2009, to the present date are in the aggregate relevant material to the prosecution of this case. I find that these demands are overly broad, unduly burdensome and not limited to scope or time. Accordingly, the motion to compel production of this documentation is in all respects denied, except that defendant must supply the table of contents in effect from that date of admission to may 18, 2009, which covers nursing services given to patients such as plaintiff; requests from patients to ambulate; protections of patients from falling; response to the call bell system and all related subjects within 30 days.

In the foregoing same discovery demand, plaintiff demands the following in the noted numbered Paragraph:

“10. Any and all duty rosters which may pertain to the persons and/or events described in the plaintiff’s complaint.”

The plaintiff maintains that the signatures and names within the hospital’s record, identifying those individuals who treated or attended to the plaintiff, are allegeable and that their names are necessary for the proper prosecution of this action. However, the defendant opposes the motion and points out that at the end of the hospital record, there is a signature sheet wherein signatures are demonstrated together with the printed name of each correspondent individual, their title, unit, and initials.

In respect to this demand for the rosters, I find that this demand is overly broad and burdensome. It appears to request information that is not in all respects relevant to the prosecution of this case. While the signatures and initials of the individuals who signed or initialed the hospital record of the plaintiff may not be legible, it appears that with the application with of the signature sheet, a legible signature, or initial can be identified with a printed name so that the names of the individuals, who attended to or treated the plaintiff during her hospital stay, is clear and identifiable.

Accordingly, the motion of the plaintiff to compel disclosure of duty rosters is in all respects denied.

On April 19, 2011, the plaintiff served a demand for insurance information pursuant to CPLR§3101(f). In doing so, the plaintiff sought disclosure of the complete and full insurance agreement and/or agreements under which an insurer and/or insurers may be liable to satisfy part or all of the judgment, which may be entered in the above captioned action. In doing so, the plaintiff sought a statement reflecting the number and amount of other claims filed against defendant and any amounts paid with respect to those claims which would be applicable to the maximum amount coverage provided during the policy term.

In respect to the insurance demand, the defendant objected to the demand for the actual insurance policies on the grounds that the demand was overly broad, unduly burdensome, not limited in scope or time and not material necessary for the prosecution of this action.

However, the defendant did inform the plaintiff that St. Peter's Hospital maintains insurance coverage, excess insurance coverage and an umbrella coverage specifics which will be provided in the supplemental response. In the Supplemental Response, dated August 4, 2011, without waiving its objection, defendant represented that St. Peter's Hospital maintains insurance coverage with Stella Maris Insurance Company, limited \$3,000,000.00 each medical incident; excess insurance coverage with Stella Maris Insurance Company, limited \$3,000,000.00 each

medical incident/\$9,000,000.00 aggregate and additional excess coverage with Stella Maris Insurance Company, limited \$100,000,000.00 each medical incident/\$100,000,000.00 aggregate.

The plaintiff maintains that this information is not responsible for plaintiff's demand.

However, the Court finds that the only deficit in the defendant's demand is the fact that the entire insurance policy without time limitation has not been provided and the number and the amount of claims made against the foregoing policies was not provided. The Court notes that the plaintiff has failed to demonstrate to the Court how it has been prejudice by the information provided by the defendant or in the lack of information. The plaintiff has failed to demonstrate to the Court the relevancy, and materiality of knowing the number of claims against the policy or the dollar amount of those claims. Further, the plaintiff has failed to demonstrate to the Court to the necessity of having the actual insurance policies in view of the aggregate amount of coverage in this case, which on its face, appear to be more than sufficient to satisfy any judgment or verdict.

Accordingly, the plaintiff's motion in respect to the insurance coverage information is in all respects denied, except that the defendant must supply the cover sheets for each applicable policy within 30 days.

All motions not specifically addressed are denied.

A copy of this Decision and Order and all motion papers upon which it was decided are being returned by this Court to the Albany County Clerk's Office. The original Decision and Order are being return to the plaintiff's counsel for filing with the Albany County Clerk and service pursuant to CPLR 2220.

So Ordered.

Dated: January 11, 2012
Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion dated December 15, 2011, with the attached Affirmation of Tracy L. Bullett, Esq. also dated December 15, 2011, with attached Exhibits A - S.
2. Affidavit of Mia D. VanAuken, Esq. dated January 3, 2012, attached Exhibits A - C.
3. Reply Affirmation of Tracy Bullett, Esq. dated January 5, 2012.