

Schlesinger v N.P. Agency

2013 NY Slip Op 32616(U)

May 3, 2013

Sup Ct, NY County

Docket Number: 800054/10

Judge: Donna M. Mills

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

JAMES SCHLESINGER,

Plaintiff,

-v-

N.P. AGENCY, et al.,

Defendants.

INDEX NO. 800054/10

MOTION DATE _____

MOTION SEQ. NO. 03

MOTION CAL NO. _____

The following papers, numbered 1 to _____ were read on this motion for _____.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits _____ 2

Replying Affidavits _____ 3

CROSS-MOTION: _____ YES NO

FILED

MAY 09 2013

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/3/13

Donna M. Mills
J.S.C.

DONNA M. MILLS, J.S.C.

Check one: _____ FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

-----X
JAMES SCHLESINGER,

Plaintiff,

Index No.: 800054/10

-against-

DECISION

N.P. AGENCY, N.P. AGENCY INC.,
et al.,

Defendants.

-----X

FILED

MAY 09 2013

COUNTY CLERK'S OFFICE
NEW YORK

DONNA MILLS, J.:

In the motion before the Court, defendants move, pursuant to CPLR 3108, for an open commission to conduct oral deposition of Kathie Schlesinger in the State of Massachusetts. Defendants also seek to strike the complaint and/or preclude plaintiff from making claims due to a failure to produce authorizations to obtain certain records of the plaintiff. Plaintiff does not oppose that branch of the motion seeking an open commission, but opposes the striking and or preclusion of its claims.

This case involves a claim for negligence and nursing malpractice. Plaintiff alleges that he was injured as a result of the negligent, reckless and careless conduct of the defendants. On November 6, 2012, defendants served a Demand for Authorizations seeking certain information with respect to matrimonial matters and legal file between plaintiff and his former spouse. On December 4, 2012, plaintiff responded to defendants' Demand for Authorizations by objecting to the demands for matrimonial records and legal file as irrelevant and privileged.

CPLR 3101 (a) provides for, inter alia, “full disclosure of all matter material and necessary in the prosecution or defense of an action.” Although the phrase “material and necessary” must be “interpreted liberally” in favor of disclosure so long as the information sought meets the test of “usefulness and reason” (Allen v Crowell-Collier Publ. Co, 21 NY2d 403, 406 [1968]; a party does not have the right to uncontrolled an unfettered disclosure (see Merkos L’Inyonei Chinuch, Inc. v Sharf, 59 AD3d 408, 410 [2009]). Further, the Supreme Court has broad discretion over the supervision of disclosure, and its determination will not be disturbed absent an improvident exercise of discretion (see Spodek v Neiss, 70 AD3d 810 [2010]).

While plaintiff claims the accident in the underlying action is a proximate cause for his divorce from Ms. Schlesinger, no documentation suggesting such has been provided to date. At this time, this Court is going to deny the request for matrimonial records and legal files until after the deposition of Ms. Schlesinger. After the deposition, if plaintiff continues to claim that the accident at the defendants premises proximately caused his divorce, the Court will entertain a renewed motion to compel. Plaintiffs’ motion seeking an open commission of Kathie Schlesinger is granted without opposition.

Accordingly it is

ORDERED that, pursuant to CPLR 3108, a commission issue in this action to a Justice of the District Court, State of California, or any other authorized person who may administer oaths pursuant to the laws of that state, to take the deposition upon oral questions of Kathie Schlesinger, of 9255 Doheny Road Apt. 1106, West Hollywood, California as witness on behalf of plaintiff [defendant] in this action and that he [she]

return the transcript of the testimony subscribed by the witness, certified to be correct, annexed to said commission, with any exhibits produced and proved before him [her], to the Clerk of the Supreme Court of the State of New York, County of New York, 60 Centre Street, New York, New York, by certified or registered mail, with all convenient speed; and it is further

ORDERED that defendants shall provide the court with an open commission form for the nonparty, nonresident noted above for the court's signature within 10 days of serving plaintiff's counsel of notice of entry of this order; and it is further

ORDERED that defendants' motion to strike or preclude is denied with leave to renew; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 574, 111 Centre Street, on 6/28 2013, at 10:00 AM.

Dated: 5/2/13

ENTER:

DM COUNTY CLERK'S OFFICE
NEW YORK
Donna Mills, J.S.C.

FILED
MAY 09 2013

DONNA M. MILLS, J.S.C.