

Gadson v Bryant Park Grill

2014 NY Slip Op 30621(U)

March 12, 2014

Supreme Court, New York County

Docket Number: 151614/12

Judge: Donna M. Mills

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

PRESENT: DONNA M. MILLS Justice

PART 58

JAMES GADSON and BURNELLA GADSON,

INDEX NO. 151614/12

Plaintiffs,

MOTION DATE

-v-

MOTION SEQ. No. 002, 003

BRYANT PARK GRILL and ARK RESTAURANTS CORP.,

MOTION CAL No.

Defendant(s).

The following papers, numbered 1 to were read on this motion to vacate note of issue.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits... 1-3

Answering Affidavits- Exhibits 45

Replying Affidavits 6, 7

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that motion sequence numbers 002 and 003 are consolidated for disposition.

In motion sequence 002, defendants Bryant Park Grill and Ark Restaurants Corp. move to vacate the note of issue to complete discovery. In motion sequence 003, defendants move to compel plaintiff James Gadson to provide authorizations pertaining to his medical treatment, diagnostic films, no-fault records, worker's compensation records and legal files relating to prior accidents. Defendants seek to compel a further vocational rehabilitation exam and/or further orthopedic exam. Defendants also seek a further deposition of co-plaintiff Burnella Gadson. Plaintiffs oppose both motions.

This is an action for personal injuries sustained by plaintiff James Gadson allegedly caused by a slip and fall incident that occurred at the Bryant Park Grill located at 40th Street, in New York County on June 8, 2011, during the course of plaintiff's employment. Plaintiff a sanitation worker, claims that he was injured when he slipped and fell on a ramp as he was removing garbage out of a storage area. Plaintiff's spouse, Brunella Gadson, asserted a cause of action against defendant alleging that she has been deprived of the society, services, and consortium of her husband, James Gadson.

In the instant action, plaintiffs served five Supplemental Bills of Particulars during the course of discovery. Plaintiff alleges that he sustained disc herniations to his lumbar spine and underwent a discectomy and hemilaminectomy and also claimed injury to the shoulders, left hip, and right knee. Plaintiff further alleges that he can no longer work due to his alleged injuries and has claimed substantial lost earnings.

Defendants contend that plaintiff, either on his own or at the direction of his counsel, have not fully cooperated with the discovery process. Defendants noticed plaintiff for a vocational rehabilitation evaluation and an orthopedic IME. However, at these examinations, defendants claim that plaintiff refused to answer and/or provide pertinent information necessary to the examinations. Secondly, defendants claim that at the deposition of the plaintiff Brunella Gadson she was instructed not to answer certain questions.

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 and 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]).

Here, defendants demand an additional orthopedic IME for plaintiff purportedly refusing to provide Dr. Passick with information regarding his subsequent medical treatment. He reportedly also declined to provide information regarding his past medical history. Additionally, defendants contend that plaintiff refused to provide any information regarding his employment history or present status. Dr. Passick's report however, does not specifically mention that the examination was obstructed as a result of the failure of James Gadson to fully answer the questions.

Defendants also demand an additional Vocational Rehabilitation examination of plaintiff James Gadson for purportedly refusing to answer questions by Dr. Beth Greenbaum. Dr. Greenbaum has submitted an affidavit in support of defendants motion, claiming that the questions which were not answered, were relevant and necessary to complete the evaluation.

CPLR 4502(b) provides that “a husband or wife shall not be required, or, without consent of the other ..., allowed, to disclose a confidential communication made by one to the other during marriage.” This spousal privilege encompasses only those statements which are confidential; i.e., induced by the marital relationship and prompted by the affection, confidence and loyalty engendered by such relationship (see

People v. Mills, 1 NY3d 269 [2003]; *Poppe v. Poppe*, 3 N.Y.2d 312 [1957], rearg. denied 3 N.Y.2d 941 [1957]).

The statutory privilege does not protect "all the daily and ordinary exchanges between the spouses, but merely those which would not have been made but for the absolute confidence in, and induced by, the marital relationship." (*People v. Melski*, 10 N.Y.2d 78, 80, 217 N.Y.S.2d 65, 66, 176 N.E.2d 81, 82). Not forbidden are "ordinary conversations relating to matters of business which there is no reason to suppose he would have been unwilling to hold in the presence of any person." (*Parkhurst v. Berdell*, 110 N.Y. 386, 393-394, 18 N.E. 123, 127 (1888)).

Here the questions that defendants asked Ms. Gadson at the deposition clearly regard ordinary statements made between husband and wife which were not intended to be confidential.

The parties agreed to resolve some of the disputed discovery issues in a so-ordered stipulation on March 7, 2014. In light of the discovery that has been agreed to by the parties and the additional discovery that is being ordered in this decision, the vacating of the notice of issue shall be granted.

Accordingly it is

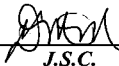
ORDERED that the defendants' motion to compel further discovery is granted to the limited extent that the plaintiff James Gadson is directed to submit to a further Vocational Rehabilitation examination and the plaintiff Burnella Gadson is directed to submit to a further deposition; and it is further

ORDERED that the plaintiffs must comply with this outstanding discovery within forty-five days of receiving a copy of this order with notice of entry; and it is further

ORDERED that the notice of issue is vacated; and it is further

ORDERED that counsel for the parties are directed to appear for a status conference in Room 574, 111 Centre Street, on August 1, 2014, at AM.

Dated: 3/12/14



DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION