

Ramos v Kohl's Dept. Stores, Inc.

2014 NY Slip Op 32649(U)

September 19, 2014

Supreme Court, Bronx County

Docket Number: 307356/09

Judge: Betty Owen Stinson

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This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT - COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA8

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YOHANIS RAMOS

Plaintiff(s),

-against-

KOHL'S DEPARTMENT STORES, INC.,
LIPINSKI LANDSCAPE & IRRIGATION
CONTRACTORS INC., LIPINSKI SNOW
REMOVAL SERVICES, LK EQUITIES,
and LK SNOWPLOWING, INC.,

Defendant(s)

-----X
LIPINSKI SNOW SERVICES INC.
i/s/h/a LIPINSKI SNOW REMOVAL
SERVICES,

Third-party Plaintiff,

-against-

LK EQUITIES and LK SNOWPLOWING INC.,

Third-Party Defendants.

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STINSON, J:

Defendant/third-party plaintiff, Lipinski Snow Services, Inc., s/h/a Lipinski Snow Removal Services (Lipinski) moves for an Order dismissing plaintiff's complaint or preclusion of testimony regarding liability and damages for plaintiff's failure to provide responses to Lipinski's notices for discovery and inspection and court orders governing disclosure in this action. Lipinski also moves for an Order striking the Answer of the third-party defendants LK Equities (LK

Equities) and LK Snowplowing, Inc. for their failure to comply with discovery demands and court orders and their failure to appear for an Examination Before Trial or to preclude LK Equities from testifying the trial of this action regarding liability and damages for their failure to provide discovery responses and to appear for an examination before trial.

After argument before the court, the court hereby directs that plaintiff shall provide the following discovery items to the Lipinski within thirty (30) days of service of a copy of this Order with Notice of Entry upon them or plaintiff's complaint will be dismissed. To the extent not previously provided to Lipinski, plaintiff shall provide the following:

Duly executed original HIPAA compliant authorizations for the following records from the following entities regarding plaintiff's accident of November 7, 2007.

- (a) complete medical records from Lawrence Hospital Center;
- (b) complete Workers' Compensation file from the collateral source provider;
- (c) complete Workers' Compensation file from the Workers' Compensation Board;
- (d) full names and addresses of any and all treating health providers including but not limited to hospitals, physicians, x-ray and MRI facilities, diagnostic testing facilities, chiropractors, physical therapists and/or surgical facilities where plaintiff treated following the November 7, 2007 accident;
- (e) medical records from Dr. Shirish Thanawala and Dr. David Ellenbogen and containing the current address where these providers may be located;
- (f) a new authorization containing the proper address for plaintiff's medical records from Greater NY Physical Therapy;
- (g) proper authorization to obtain plaintiff's records from New York Sabe;
- (h) last known address of Marceylene Torres;
- (i) name and address of pain specialist plaintiff was referred to by Dr. Espejo and duly executed authorization to said pain specialist who saw plaintiff at Lincoln Hospital;

- (j) HIPAA compliant authorization for updated medical records from Dr. Memoli;
- (k) HIPAA compliant authorizations for the ambulance call report for a prior injury that occurred in October or November 2007;
- (l) HIPAA compliant authorizations to obtain complete medical records from plaintiff's gastroenterologist seen following the October or November 2007 accident;
- (m) HIPAA compliant authorization for updated medical records from Co-Op City Chiropractic;
- (n) HIPAA compliant authorization to Emblem Health Group and Dr. Saran Rosner identified in plaintiff's collateral source file from Sedgwick Claims;
- (o) HIPAA compliant authorization for Medicaid records which shall include a Power of Attorney if the authorization is signed by someone other than the plaintiff;
- (p) complete copy of insurance policy and declaration page for the policy issued by Burlington Insurance Company that was in effect at the time of the subject accident;
- (q) HIPAA compliant authorization for medical records from Park Radiation n/k/a Dynamic Medical Imagery, PC, located in Maspeth, New York;
- (r) HIPAA compliant authorization of medical records from St. Joseph's Hospital and Radiology Department located in Yonkers, New York;
- (s) HIPAA compliant authorization for medical records of Dr. Ramos Babu;
- (t) HIPAA compliant authorization to obtain plaintiff's complete records from
 - (1) New York Department of Education
 - (2) Council on Education for District 10
 - (3) Council on Education for District 9
 - (4) Council on Education;
- (u) HIPAA compliant authorization for updated records from Dr. Hall;

The branch of Lipinski's motion which seeks to strike LK Equities Answer or preclude testimony at trial is granted to the extent that LK Equities shall provide a response to Lipinski's Notice for Discovery and Inspection dated April 26, 2013 with respect to insurance policies issued to LK Equities that were in effect at the time of the subject accident; a complete response to the

Notice for Discovery and Inspection and to LK Equities on November 1, 2013 regarding insurance; the February 3, 2014 demand for photographs; the demand for accident/incident reports; the demand for contracts; demand for insurance information; demand for maintenance records; demand for statements; demand for witnesses. The above shall be provided to Lipinski Snow Removal, Inc. within thirty (30) days from service of this Order, Notice of Entry upon the LK Equities and to the extent not previously provided. Failure of the third-party defendant to provide said discovery will result in its preclusion at trial from offering evidence with regard to liability and damages.

Additionally, third-party defendant LK Equities shall produce a witness with knowledge for Examination Before Trial within forty-five (45) days of the service of a copy of this Order with Notice of Entry on a date, time and place to be agreed upon between the parties.

This constitutes the decision and Order of the court.

September 19, 2014
Bronx, New York



BETTY OWEN STINSON, J.S.C.