

Castelo v Port Chester Coach Diner

2014 NY Slip Op 33015(U)

March 3, 2014

Sup Ct, Westchester County

Docket Number: 59989/2012

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513(n)), you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X
SUSANA CASTELO,

Plaintiff

DECISION and ORDER

Index No. 59989/2012
Motion Date: Mar 3, 2014
Seq. No. 3

-against-

PORT CHESTER COACH DINER,
317 BOSTON POST REALTY, INC., and
RAMON FERNANDEZ,

Defendants
-----X

LEFKOWITZ, J.

The following papers were read on this motion by defendants for an order compelling plaintiff to provide to them an authorization to obtain plaintiff's workers' compensation records or disability records from Greenwich Hospital, or in the alternative, a sworn affidavit from plaintiff stating that she did not make any workers' compensation claims or disability claims and did not receive any workers compensation or disability benefits or, in the alternative, precluding plaintiff from offering evidence at trial as to any lost wage claim or special damages claim, or in the alternative, dismissing plaintiff's claim, and for such other and further relief as this court deems just and proper.

- Order to Show Cause dated January 29, 2014
- Affirmation in Support
- Exhibits A-K
- Affirmation in Opposition
- Exhibits A-C

Upon the foregoing papers and upon oral argument heard on March 3, 2014, this motion is determined as follows:

In this action, commenced on June 24, 2012, plaintiff seeks damages for personal injuries allegedly sustained on March 10, 2010, when she was struck in the right shoulder by a vent which fell from the ceiling of the defendant, Port Chester Coach Diner. In her verified bill

of particulars, dated December 19, 2012, plaintiff alleged injuries to her right shoulder and lumbar spine.

By letter dated June 6, 2013, plaintiff informed defendants that on April 15, 2010, she injured her lower back when she attempted to adjust a bed at work at Greenwich Hospital because she was using the strength of only her left arm and shoulder.¹ In her supplemental bill of particulars dated June 24, 2013, plaintiff claimed, among other things, lost wages and lost income from March 10, 2010 to date in the amount of \$ 80,000, and “continually increasing”.

Plaintiff appeared for a deposition on August 15, 2013. She testified that her accident occurred on a Wednesday. She returned to work at Greenwich Hospital the following Monday at which time she hurt her back while moving a bed. Thereafter she stayed out of work for two months. Defense counsel asked plaintiff if she filed a workers’ compensation claim following the accident in the hospital. Plaintiff responded that “they pay me”. Defense counsel requested the production of an authorization to obtain the workers’ compensation files with regards to plaintiff’s accident that occurred in the hospital, three or four days following the subject incident. Plaintiff further testified that in March 2010 she not only worked at the hospital but also cleaned several houses six days a week, Monday through Saturday. After the subject accident she stopped cleaning houses for about a month and then returned to cleaning some of the houses in April. Two months following the subject accident she returned to her “normal duties”. She testified that she worked at the hospital to obtain social security and retirement benefits. Defense counsel asked plaintiff what money she lost from working at the hospital. Plaintiff responded that she didn’t lose because workers’ compensation paid for everything (31).

On or about August 19, 2013, defense counsel served plaintiff with a post deposition demand seeking, among other items, a duly executed HIPAA compliant authorization to obtain plaintiff’s workers’ compensation records with regards to the accident that occurred on March 15, 2010.

The parties appeared for a compliance conference on August 27, 2013. The compliance conference order directed plaintiff to respond to defendant’s post deposition demands of August 19, 2013 and to serve the authorizations for the workers’ compensation records and insurance records by September 6, 2013.

Plaintiff’s response to the post deposition demands is dated September 4, 2013. Plaintiff stated therein that she was “trying to ascertain if there was a workers’ compensation claim filed in New York or Connecticut or in the alternative if the plaintiff filed a disability claim through her employer. Once the correct entity and type of claim has been determined we will provide the appropriate response and authorization if applicable”.

¹Although the letter indicates the second accident occurred on April 15th, at plaintiff’s deposition she and her counsel made it clear that the second accident at the hospital occurred on March 15th.

The parties appeared for a conference on January 15, 2014, at which time defendants were directed to make the present motion. Presently, defendants seek an order compelling plaintiff to provide them with an authorization to obtain the plaintiff's workers' compensation records or disability records, or in the alternative, a sworn affidavit from plaintiff stating that she did not make any workers' compensation claims or disability claims and did not receive any such benefits or, in the alternative, be precluded from offering any evidence at trial as to any lost wage claim or special damages claim or, in the alternative, dismissing the complaint on the grounds that plaintiff has violated court orders regarding discovery. Defendants note that they are entitled to these requested records insofar as they have a direct bearing to plaintiff's claim of damages in the sum of \$ 80,000 and continuing, and in light of plaintiff's deposition testimony that she received workers' compensation benefits.

Plaintiff opposes this motion. She states that the discovery sought has already been provided to defendants and that, contrary to defendants' assertions, she has complied with all of this court's discovery orders and responded to all of their discovery requests by providing all information/documents that are in her possession. Plaintiff states that she served the duly-executed authorization presently sought by defendants on June 24, 2013.

Plaintiff notes that despite having provided the requested authorization to defendants two months before the August 27, 2013 compliance conference, plaintiff's counsel nevertheless made reasonable attempts to determine whether plaintiff in fact filed a workers' compensation or disability claim through inquiries to the hospital's employee records department. Plaintiff states she has reason to believe that no claim for workers' compensation and/or disability benefits has been filed by plaintiff based on a letter (undated) recently received from Greenwich Hospital. Therein, the hospital's director of human resources states that plaintiff has been an employee of the hospital since September 24, 2007. It further states that the director is waiting for a response on the question about workers' compensation claims. Plaintiff notes that she is not in possession of any information or records relating to claims for workers' compensation or disability benefits filed and that if she were, she would provide the same to defendants. Plaintiff maintains that she has complied promptly with all discovery orders and defendants' discovery demands.

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Mironer v City of New York*, 79 AD3d 1106, 1108 [2d Dept 2010]; *Auerbach v Klein*, 30 AD3d 451, 452 [2d Dept 2006]). In this case plaintiff claims she was injured when a vent fell on her right shoulder when she was at the defendant diner and that five days later her lower back suffered injuries as she was trying to do her job in light of the injuries suffered five days earlier. In her bill of particulars

plaintiff stated she seeks damages for lost wages and income in the amount of \$ 80,000 and continuing. Plaintiff agrees that the discovery now sought by defendants is proper but claims she has provided already the authorization from Greenwich Hospital for plaintiff's workers' compensation and/or disability records.

Upon close examination of plaintiff's response (dated June 24, 2013) to defendants' notice of discovery and inspection the court finds that plaintiff provided 11 authorizations to defendants permitting them to obtain various medical records, a radiological record and an EMS record. The twelfth authorization permits defendants to obtain plaintiff's employment records from Greenwich Hospital. It is addressed to the employee records department of the hospital but specifies that only information regarding plaintiff's attendance records from the date of the accident, March 10, 2010, to the present be released. Plaintiff concedes that defendants are entitled to information relating to whether any claims for workers' compensation and/or disability benefits were filed. Accordingly, it is:


ORDERED that defendants' motion is granted to the extent that plaintiff is directed to provide the proper authorization(s) to permit defendants to obtain plaintiff's workers' compensation records regarding any claims made with regards to plaintiff's accident that occurred in Greenwich Hospital on March 15, 2014, and/or disability claims records, or to provide a sworn affidavit from plaintiff, Susan Castelo, stating that she did not make any such claims and did not receive benefits, and to do so on or before March 17, 2014; and it is further,

ORDERED that defendants are directed to serve a copy of this order with notice of entry upon plaintiff within seven (7) days of this order; and it is further,

ORDERED that the parties are directed to appear for a conference in the Compliance Part, Room 800, on March 24, 2014, at 9:30 A.M.

This constitutes the Decision and Order of this Court.

Dated: White Plains, New York
March 3, 2014


HON. JOAN B. LEFKOWITZ, JSC