

Itshakov v Diversified Realty
2015 NY Slip Op 30195(U)
January 20, 2015
Supreme Court, Queens County
Docket Number: 702436/13
Judge: Timothy J. Dufficy
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ORIGINAL

Short Form Order

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS**

**Present: Hon. Timothy J. Dufficy
Justice**

IAS PART 14

-----X
GULIYA ITSHAKOV,

Index No. 702436/13

Plaintiff,

Motion Date: 11/17/14

- against -

Motion Cal. No. 74

**DIVERSIFIED REALTY and CAMELOT
REALTY, L.L.C.,**

Mot. Seq.: 2

Defendants.
-----X

FILED
JAN 23 2015
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 9 read on this motion by defendants for an order vacating the Note of Issue and striking this case from the trial calendar and compelling plaintiff to respond to defendants' post EBT demands for discovery dated February 27, 2014.

	<u>Papers Numbered</u>
Notice of Motion - Affirmation - Exhibits	1 - 4
Affirmation in Opposition - Exhibits	5 - 7
Reply Affirmation.....	8 -9

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and all exhibits, including the transcript of plaintiff's deposition, the motion is decided as follows:

This is an action for personal injuries allegedly suffered by the plaintiff as a result of a trip and fall on the defendants' premises, located at 105-10 62nd Road, Forest Hills, New York, on March 21, 2013. The plaintiff appeared for her deposition, on February 12, 2014. Following the plaintiff's deposition, the defendants served discovery demands, dated February 27, 2014. In response, the plaintiff served a Notice of Rejection, objecting to the demands in their entirety. The defendants herein move to compel the plaintiff to provide the

documents requested.¹

While CPLR 3101(a) requires “full disclosure of all matter material and necessary in the prosecution or defense of an action,” (*see, Allen v. Crowell-Collier, Pub. Co.*, 21 NY2d 403 [(1968)]), a party, however, does not have the right to “uncontrolled and unfettered disclosure” *see, Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 (2d Dept. 2007). “It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims.” *see, Vyas v Campbell*, 4 AD3d 417, 418, (2d Dept. 2004), quoting *Crazytown Furniture v. Brooklyn Union Gas Co.*, 150 AD2d 420, 421. Thereafter, the party opposing disclosure has the burden of establishing that the material sought to be discovered is privileged. *see, Koump v Smith*, 25 NY2d 287 (1969).

The defendants herein seek to compel the plaintiff to provide various authorizations, originally demanded by way of post deposition demand dated February 27, 2014. Specifically, the defendants request an authorization for the plaintiff’s primary care physician, the basis for this request being the plaintiff’s alleged statement, (as noted in her hospital records on the date of incident), that the plaintiff’s fall was preceded by dizziness. (Medical record from New York Hospital Queens, annexed as Exhibit D to the moving papers). The plaintiff objects to the defendants’ requests for said authorization being unrestricted as to date, and further argues that the plaintiff has not placed her entire physical condition into issue so as to warrant providing an authorization for her primary care physician. However, this Court finds that the above noted notations in the plaintiff’s hospital records provide a reasonable basis for the release of the plaintiff’s primary care records to evaluate whether plaintiff suffered from any conditions or took any medications, where a possible side effect was dizziness.

The defendants also seek an authorization for the release of records from the adult day care facility plaintiff attended prior to the accident, specifically with regard to any medication she was given at said facility. The plaintiff objects, stating that the plaintiff’s testimony established that said facility did not administer medication to her. A review of the relevant

¹Although the Notice of Motion states that this motion seeks to compel *responses* to the discovery demands in question, this court will treat same as a motion to compel the production of the discovery requested, in the interest of judicial economy, and as same has been fully addressed in the papers submitted herein by both plaintiff and defendants.

portions of the transcript of the plaintiff's examination before trial on this issue (annexed to the moving papers as Exhibit C) reveals that the plaintiff's testimony was that prior to this incident, this facility did in fact regularly administer the plaintiff's medication to her. As such the defendants should be provided with the authorization.

Next the defendants seek an authorization for the facility where the plaintiff received physical therapy following this incident. Again, a review of the transcript confirms that plaintiff testified that she received physical therapy as a result of the injuries claimed in this matter (Transcript of plaintiff's EBT at pages 66-67). Accordingly, an authorization for the physical therapy facility shall be provided by the plaintiff.

Lastly, the defendants request an authorization for the release of the plaintiff's home health care attendants' records. The defendants assert that said request stems from the plaintiff's testimony that she called her home health aide immediately following her fall (Transcript of plaintiff's deposition at p.34), and as such, the defendants should be able to interview said aid to ascertain whether the plaintiff advised her home health aide of the reason for and location of her fall. The plaintiff argues, however, that this testimony does not provide a basis to release unrestricted authorizations for home attendant records. This Court agrees.

Although the plaintiff herein provides a copy of an authorization for the release of the plaintiff's Medicare/Medicaid records and states that same was forwarded to the defendants by way of the plaintiff's Response to Demands and Preliminary Conference Order, dated November 12, 2014, the plaintiff fails to include a copy of the affidavit of service for this document. Given that the defendants claim that they never received same, the plaintiff is directed to provide this authorization once again to the defendants.

In keeping with the foregoing, this Court finds the following authorizations to be relevant and bearing on the claims in the case.

Accordingly, it is

ORDERED, that the plaintiff is to provide, within thirty (30) days of the date of service of this Order with Notice of Entry,

1) an authorization for the plaintiff's primary care physician, allowing the release of the plaintiff's records for one (1) year prior to the date of incident;

2) an authorization for the day care facility where plaintiff attended prior to this incident, allowing the release of records pertaining to medications administered to the plaintiff by this facility, for one (1) year prior to the date of incident;

3) an authorization for the facility where plaintiff received physical therapy in connection with the injuries claimed in this matter; and

4) an authorization for the release of plaintiff's medicare/medicaid records.

All other applications not specifically addressed herein are denied.

The defendants shall serve the plaintiff with a copy of this Order with Notice of Entry within fifteen (15) days of the date of entry.

The foregoing constitutes the decision and order of this court.

Dated: January 20, 2015



TIMOTHY J. DUFFICY, J.S.C.