

Blackman v Hum
2015 NY Slip Op 32593(U)
August 7, 2015
Supreme Court, Queens County
Docket Number: 704537/13
Judge: Frederick D.R. Sampson
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Short Form Order

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

Present: Hon. Frederick D.R. Sampson
Justice

IAS PART 31

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NIKIYAH BLACKMAN,

Index No.: 704537/13

Plaintiff,

Motion Date: 6/3/15

- against -

Motion Cal. No.: 24 + 25

STEWART HUM, LIA DAWN WILLIAMS
and CITIWIDE AUTO LEASING, INC.,

Seq. No.: 3 + 4

Defendants.

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The following papers numbered 1 to 19 read on these motions (Seq.#3) by defendant Hum for an order dismissing plaintiff's complaint for failure to comply with discovery orders and (Seq.#4) by defendants Williams and Citiwide Auto Leasing, Inc., for an order vacating plaintiff's note of issue or, in the alternative, compelling the deposition and independent medical examination of plaintiff.

FILED
AUG 20 2015
COUNTY CLERK
QUEENS COUNTY

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Upon the papers filed in support of the within motions and the papers filed in opposition thereto, and the parties having appeared on the return date of the motions before the Referee in the Central Motion, the within motions are decided as follows:

The within action is one for personal injuries allegedly sustained by the plaintiff while a passenger in a motor vehicle operated by defendant Williams which was involved in an accident with a vehicle operated by defendant Hum. Plaintiff commenced the action, issue was joined and discovery ensued.

Pursuant to the Compliance Conference order of October 27, 2014, plaintiff was to provide a response to defendants demands for authorizations dated August 28, 2014, September 11, 2014 and October 17, 2014. Plaintiff provided numerous authorizations, but objected to some as irrelevant and privileged, claiming they were for medical records unrelated to the back injury she claims in this action. As a result, the deposition and independent medical examination of the plaintiff did not take place. Defendants now move to vacate the note of issue or compel the outstanding discovery.

At the outset, plaintiff has agreed to appear for deposition and an independent medical examination. As such, the parties shall schedule and hold the deposition and independent medical examination forthwith.

It is well settled that a party must provide medical authorizations for the release of pertinent medical records when that party has waived the physician-patient privilege by affirmatively putting his physical condition in issue, (*see*, CPLR § 3121[a]), and CPLR § 3101(a) requires full disclosure of all evidence material and necessary to the defense of an action. *See, Alien v. Corwell-Collier Publ Co.*, 21 N.Y.2d 403 (1968). However, a party does not waive the physician-patient privilege with respect to unrelated illnesses or injuries. *See, Romance v. Zavala*, 98 A.D.3d 726 (2nd Dept. 2012).

While plaintiff has provided numerous authorizations to defendants, plaintiff seeks to restrict in time those authorizations for prior treating physicians, even though the treatment was for the same body parts claimed to have been injured in this action. Here, plaintiff claims injury to her right shoulder requiring surgery, limited range of motion in the left knee, numerous protrusions in the cervical spine and aggravation and/or exacerbation of a prior lumbar spine injury. Defendants are entitled to those records relating to the same body parts claimed in this action, as such plaintiff shall provide duly executed unrestricted HIPAA complaint authorizations for those prior treating physicians, non-privileged legal files if applicable, and Workers Compensation files within fifteen (15) days.

As the Court cannot determine from the motion papers which medical providers the plaintiff has previously provided authorization and for which medical providers plaintiff claims privilege, the plaintiff shall, within fifteen (15) days of service of the within order with notice of entry, provide a response to defendants for each authorization sought in the demands dated August 28, 2014, September 11, 2014 and October 17, 2014, whether it has been provided (previously or in accordance with the directives herein to provide unrestricted authorizations for all providers who treated those parts of the body for which injuries are claimed in the within action) or a claim of privilege is made as unrelated (i.e. ob-gyn records).

As it is apparent that plaintiff attempted to withdraw a claim for anxiety and mental anguish by service of an Amended Bill of Particulars removing same, the defendants demand for mental health records is denied if plaintiff formally withdraws her claims for anxiety and

mental anguish within fifteen (15) days of service of the within order with notice of entry. If plaintiff fails to withdraw said claims, plaintiff shall provide authorizations for the release of her mental health records within fifteen (15) days of service of the within order with notice of entry.

Plaintiff objects to providing an authorization for the release of the medical records and attorney files pertaining to a prior law suit which did not make claims for physical injuries. As such, defendants are not entitled to those records.

Accordingly, it is

ORDERED that plaintiff shall provide fresh HIPAA compliant unrestricted authorizations for those medical providers with whom plaintiff treated for prior injuries to those body parts claimed to have been injured in the within action and the non-privileged legal files if applicable, and Workers Compensation records, to the extent not yet provided, within fifteen (15) days of service of a copy of this order with notice of entry, if plaintiff was not seen by one of the named providers, an affidavit stating such shall be provided within the time frame set forth; and it is further

ORDERED that plaintiff shall provide fresh HIPAA compliant unrestricted authorizations for mental health providers, within fifteen (15) days of service of a copy of this order with notice of entry, unless plaintiff formally withdraws her claim for same within the same time period; and it is further

ORDERED that Plaintiff shall provide a response to defendants demands dated August 28, 2014, September 11, 2014 and October 17, 2014 indicating which authorizations were provided previously and in accordance with the directive of this order to provide an authorization all for medical records pertaining to those body parts for which injuries are claimed in the within action, and provide a privilege log for those medical providers for whom a claim of privilege is made (*see, Stephen v. State*, 117 A.D.3d 820, 985 N.Y.S.2d 698 (2nd Dept. 2014), within fifteen (15) days of service of the within order with notice of entry; and it is further

ORDERED that defendant's motion is granted to the extent that plaintiff's complaint shall be deemed dismissed, without further need of application to this court, in the event plaintiff fails to appear for a deposition within thirty days of service of a copy of this order with notice of entry; and it is further

ORDERED that the depositions of the parties herein shall continue from day to day until completed; and it is further

ORDERED that any demands for disclosure arising out of the depositions shall be served within ten (10) days of the deposition of the party upon whom the demand is made, and shall be responded to within thirty (30) days; and it is further

ORDERED that defendants shall designate a physician to conduct the independent medical examinations of the plaintiff within seven (7) days after the completion of plaintiff's deposition, with plaintiff to appear for said medical examination by no later than twenty-one (21) days after service, and any reports referable to same to be served upon plaintiff's counsel by no later than thirty days after the exam; and it is further

ORDERED that the failure to designate physicians to conduct the independent medical examinations by the date set forth above shall result in defendant waiving any right to said independent medical examinations; and it is further

ORDERED that the failure to appear for physical examinations in accordance herewith shall result in the plaintiff being precluded from offering any evidence at trial with regard to injuries; and it is further

ORDERED that all other discovery that may be presently due and owing to either party, but which was not specifically set forth in the papers submitted in support of the present application, is hereby deemed waived; and it is further

ORDERED that defendants' application for an extension of time to move for summary judgment is denied without prejudice to renewal simultaneously with the making of a motion for summary judgment; and it is further

ORDERED that defendant shall serve a copy of this order on plaintiff, with Notice of Entry, within ten (10) days of entry; and it is further

ORDERED that all applications not specifically addressed herein are denied.

The foregoing constitutes the decision and order of this court.

Date: August 7, 2015



J.S.C.

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QUEENS COUNTY