

Sarmiento v AMPEX Casting Corp.
2016 NY Slip Op 30889(U)
May 16, 2016
Supreme Court, New York County
Docket Number: 150294/2011
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32**

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ELSA SARMIENTO

**Index No. 150294/2011
Motion Seq: 003**

Plaintiff,

- against-

**AMPEX CASTING CORPORATION AND
JOSEPH IPEK**

**DECISION/ORDER
ARLENE P. BLUTH, JSC**

Defendants.

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The motion by defendants Ampex Casting Corporation (Ampex) and Joseph Ipek to compel the production of HIPAA compliant authorizations pursuant to CPLR 3124 relating to plaintiff's alleged claims for emotional distress is granted.

This case arises out of alleged unlawful sexual discrimination, harassment and retaliation pursuant to the New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHRL). Plaintiff, a former employee of defendant Ampex, claims that Mr. Ipek was her supervisor during her employment at Ampex.

Defendants argue that they are entitled to medical authorizations relating to plaintiff's claims that she experienced emotional distress. Defendants maintain that at a Preliminary Conference Order, dated October 20, 2015, plaintiff agreed to provide "authorizations for all medical providers on or before December 11, 2015." Defendants also point to the Court's decision and order, dated December 23, 2015, that ordered the parties to comply with the

discovery schedule in the Preliminary Conference Order dated October 20, 2015.

In the alternative, defendants request that plaintiff be summarily precluded from offering evidence in support of plaintiff's claims for emotional distress or that these claims be stricken from plaintiff's pleadings. Defendants also seek costs and attorneys' fees in connection with the instant motion.

In opposition, plaintiff claims that defendants seek authorizations for all of plaintiff's medical history and that such a request is not warranted. Plaintiff claims that an attorney from plaintiff's counsel's office attended the Preliminary Conference on October 20, 2015 and made a verbal agreement that the authorizations that plaintiff would provide were limited to records relevant to the litigation. Plaintiff maintains that this motion is pending simply because plaintiff did not provide the records in the particular method desired by defendants.

"Inasmuch as plaintiff has clearly voluntarily put her prior medical condition at issue, such disclosure is material and necessary for the defense of this action" (*Colwin v Katz*, 102 AD3d 449, 449, 961 NYS2d 2 [1st Dept 2013]). Disclosure is appropriate where "defendants' demand is tailored, directed at relevant material, and is not tantamount to a fishing expedition" (*id.*).

In the instant action, plaintiff has clearly put her medical history relating to her emotional distress at issue by alleging that "[a]s a result of Defendant Ipek's conduct, Plaintiff suffered extreme emotional stress" (Plaintiff's complaint ¶ 23) and that "Plaintiff has suffered from extreme emotional distress for which she is taking medication" (*id.* ¶ 26). Defendants are entitled to authorizations for those medical providers who treated plaintiff for her extreme emotional distress because plaintiff has put her emotional distress in controversy (*see Clark v Allen &*

Overy, LLP, 125 AD3d 497, 498, 4 NYS3d 20 [1st Dept 2015] [holding that defendant was entitled to compel plaintiff to submit to a mental examination in a sexual harassment case because plaintiff had put her mental condition in controversy by alleging severe emotional distress]). Defendants are not entitled, however, to medical authorizations for *all* of plaintiff's medical providers.

The conduct evidenced by the attorneys in this matter is troubling and sets a poor example. For instance, a member of plaintiff's counsel's law firm stated in an email that "a lengthy discussion of this sort with a pretentious first year associate is inherently senseless" (affirmation of defendants' counsel, exhibit C at 1). Further, counsel for both plaintiff and defendants refused to try and work out the instant dispute at oral argument.

Summary

Counsel for defendants indicated at oral argument that he had identified the specific medical providers relating to plaintiff's emotional distress claim from which he seeks authorizations. Defendants are to provide this list to plaintiff by May 31, 2016. Plaintiff must provide authorizations for these providers on or before July 12, 2016 unless there is a good faith basis to object. If plaintiff fails to comply or bring an order to show cause for a protective order by July 12, 2016, plaintiff may be prohibited from offering any testimony regarding her emotional distress.

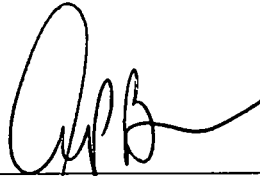
Accordingly, it is hereby

ORDERED that defendants' motion to compel plaintiff to produce authorizations for the release of plaintiff's medical records is granted to the extent stated above; and it is further

ORDERED that the branches of defendants' motion seeking to precluding plaintiff from introducing evidence in support of plaintiff's claims and/or striking those portions of the pleadings that seek recovery for emotional distress is denied at this time.

This is the decision and order of the Court.

Dated: May 16, 2016
New York, New York



HON. ARLENE P. BLUTH, JSC