

Shapiro v Ristich

2016 NY Slip Op 32993(U)

October 13, 2016

Supreme Court, New York County

Docket Number: 107154/09

Judge: Alice Schlesinger

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This opinion is uncorrected and not selected for official publication.

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

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MARTIN SHAPIRO, as Administrator of the Estate
of NATALIE CLARK, Deceased,

Plaintiff,

Index No. 107154/09

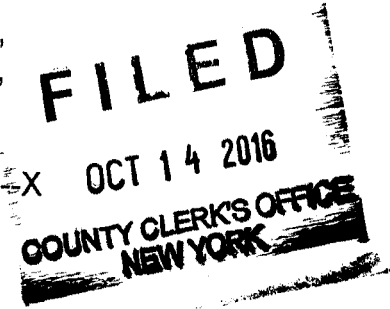
Motion Seq. No. 009

-against -

MIODRAG RISTICH, M.D., ROBERT FRIEDMAN, M.D.,
and DEWITT REHABILITATION & NURSING CENTER,

Defendants.

-----X
SCHLESINGER, J:



Before the court are competing motions regarding the testimony of non-party, Marilyn Lichtman. Ms. Lichtman was the owner of defendant DeWitt Rehabilitation & Nursing Center ("DeWitt") while the decedent was a resident there in 2007-2008. This action, which bears an index number of 2009, has had a long, somewhat tortured discovery history. These motions specifically concern an earlier decision of mine, dictated on the record on July 24, 2016, which sought to bring an end to this part of that process.

In the course of the earlier motion practice, I was informed that all of the relevant witnesses in this action had by that time been deposed. The plaintiff was asking for some resolution regarding obtaining information from Ms. Lichtman. This subject had been raised before but I had wanted all other depositions to be completed before resolving it. Counsel for plaintiff made it clear that information from this former owner was still desired.

In the July decision, for reasons placed on the record, I decided that Ms. Lichtman should not be subject to a deposition. But I did believe there were "legitimate questions that could be put to her in writing" (pg 5). Therefore, I directed that she be subject to written interrogatories, given under oath. I then attempted to set the parameters for these questions. I said she could be asked questions about her part in the budget process, for

2007-8; whether she took a salary; what was her involvement in cost reporting; her part in staffing positions; her day to day involvement in the operation of DeWitt. Finally I noted that if the answers to any of these questions were “yes”, there could be appropriate follow-up. (pgs 5-7)

Then soon after plaintiff served their Interrogatories, dated July 26, 2016. They were extensive. Unfortunately what followed were not answers but rather an Order to Show Cause, dated August 29, 2016 requesting a

“protective order prohibiting Marilyn Lichtman from responding to plaintiff’s demand for interrogatories and denying plaintiff from obtaining any further discovery from Ms. Lichtman, or alternatively, requiring plaintiff to amend its demand for interrogatories to conform to the June 22 (sic) 2016 Court Order; (2) New York Rules of Court §130-1.1.”

Plaintiff responded by cross-moving to compel Ms. Lichtman to appear for a deposition, or alternatively compelling her to respond to the July 26 interrogatories.. Additionally, counsel asked to renew argument of this court’s prior decision based on Ms. Lichtmans’ “willful refusal to respond to Plaintiff’s interrogatories” by bringing the motion for a protective order. I also received a cross-motion from counsel for defendant Miodrag Ristich for a protective order regarding items 26 (c)(d) and (h) of the interrogatories.

I held oral argument. At that time, I asked counsel for plaintiff to resubmit an earlier motion they had made to see what arguments, if any, were made there as to the burden on plaintiff, in an action such as this, to demonstrate intent/motive as part of their claim under Public Health Law §2801-d. We also scheduled a conference call for the afternoon of October 7th.

The conference call was held and we discussed discovery vis-a-vis Marilyn Lichtman. I then told counsel I would be writing a decision by using exhibit “F” to DeWitt’s latest motion, the lengthy interrogatories submitted by plaintiff. By doing this, I was

reaffirming my decision not to order Ms. Lichtman to be deposed. However, I want to make it clear that I expect Ms. Lichtman to fully cooperate and answer all of the questions I am now directing her to answer. Without further explanation, the questions I am directing be answered are within the parameters I set in my June decision on the record. These are those questions.

Items


- 7
- 9 - but not 9A-9E
- 10 - all of A-E but only for the period 2007-2008
- 11 - with the same proviso but not items 11C or D but all of the other parts of item 11 shall be answered
- 13A
- 14 - for the years 2007-2008
- 15 - but with regard to 15 B, 1-7, but only if she knows this information
- 16
- 18 - only through "B"
- 19 - A-K, again to the extent she knows
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- 26 - but not 26D, F, or H
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- 42

I am not directing answers to any item not specified. The interrogatories that are to be answered end with item 42. These responses shall be completed on or before November 9. I am hopeful this decision completes discovery, not only regarding Marilyn

Lichtman but also regarding the entire action.

It is hereby ORDERED that motion sequence 009 is resolved in accordance with this memorandum decision.

Date: October 13, 2016



Alice Schlesinger, J.S.C.

FILED
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COUNTY CLERK'S OFFICE
NEW YORK