

Williams v Abiomed, Inc.

2016 NY Slip Op 33010(U)

October 28, 2016

Supreme Court, Kings County

Docket Number: 500885/2014

Judge: Laura Lee Jacobson

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At an IAS Term, Part 21 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civil Center, Borough of Brooklyn, City and State of New York, on the 28th day of October 2016

PRESENT:

HON. LAURA L. JACOBSON

Justice

SABRINA WILLIAMS,

Plaintiff,

-against-

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ABIOMED, INC., EMILY K. KABERER, R.N., LOUKAS BOUTIS, M.D., ALEXANDER LEE, M.D., PERWAIZ MERAJ, M.D., MICHAEL KOO, M.D., ROHAN BHANSALI, M.D., PURVESH PATEL, M.D., NIRAV MEHTA, M.D., YOURAN GAO, M.D., SHAUN BHATIA, M.D., WHITNEY LENNON, M.D., JENNIFER REYES-BUENO, R.N., WANDA PABON, R.N., BOBBY VARGHESE, N.P., SANDEEP JAUHAR, M.D., PRAVIN SINGHAL, M.D., GREGG LANDIS, M.D., and LONG ISLAND JEWISH MEDICAL CENTER,

Defendants.

The following papers numbered 1 to 8 read on this motion

Papers

Numbered

1

Notice of Motion and Affirmations Annexed	1-4
Answering Affirmation	5-6
Reply	7-8

Defendant Abiomed, Inc. (hereinafter "Abiomed") moves for an order pursuant to CPLR §3124 compelling plaintiff to provide responses to its Second Supplemental Notice for Discovery and Inspection dated November 13, 2015; and pursuant to CPLR §3124, compelling plaintiff to provide responses to its Third Supplemental Notice for Discovery and Inspection dated February 17, 2016; or pursuant to CPLR §3126 striking plaintiff's complaint, or in the alternative precluding plaintiff from offering evidence at trial in this matter; and pursuant to CPLR §3124, compelling plaintiff to execute a confidentiality agreement regarding the dissemination and production of intellectual property belonging to defendant Abiomed, prior to the conducting of defendant Abiomed's examination before trial; and for such other and further relief as this Court deems just, proper and equitable. Plaintiff moves for an order pursuant to CPLR §3126, striking the answer of defendant Abiomed for failure to comply with Court ordered discovery, in particular failing to provide demanded and Court ordered documentary discovery and failing to produce witnesses for deposition; and for such other and further relief as this Court deems just and proper.

Plaintiff commenced this action seeking damages for injuries allegedly sustained as a result of defendants' medical malpractice. Plaintiff contends that when she was brought to Long Island Jewish Medical Center in July of 2013, where she subsequently went into cardiac arrest, defendants inserted an Impella 2.5 ventricular assist device into her right leg. The device was manufactured by defendant Abiomed. Plaintiff alleges that the device cut off the flow of blood to her right leg, resulting in muscle and nerve death. Plaintiff alleges that the leg developed gangrene and had to be amputated.

Defendant Abiomed argues that plaintiff has failed to comply with certain discovery requests, but most importantly, plaintiff has failed to sign defendant Abiomed's confidentiality agreement. Defendant Abiomed contends that it cannot produce a witness for examination before trial or provide any further discovery in response to plaintiff's overly broad and vague demand seeking all

documents related to the Impella 2.5, until the agreement is signed due to the risk of the misappropriation of trade secrets. Defendant Abiomed argues that it has a right to protect its intellectual property.

Plaintiff alleges that she has now complied with all discovery demands and that she cannot be compelled to sign defendant Abiomed's overly broad confidentiality agreement which places the burden on plaintiff to move, if she seeks information that defendant Abiomed has labeled confidential. Plaintiff argues that defendant Abiomed can move for a protective order if it deems any of the discovery sought by plaintiff to be confidential; and to date, defendant Abiomed has failed to do so. Plaintiff further asserts that the subject agreement violates public policy and defendant Abiomed has waived any claim to a confidentiality agreement by failing to raise the issue at a preliminary conference or a subsequent compliance conference. Plaintiff argues that each conference produced orders setting forth a timetable for depositions and the production of documents and defendant Abiomed has yet to comply with those orders.

While it is true that "material confidential in nature, or information which is subject to abuse if widely disseminated, shall be accorded judicial safeguards where possible" (*McLaughlin v. G.D. Searle, Inc.*, 38 A.D.2d 810, 811 [1st Dept. 1972]), defendant Abiomed has failed to establish that to that end, plaintiff is required to sign defendant Abiomed's broad confidentiality agreement. Plaintiff argues correctly, that defendant Abiomed may move for a protective order if indeed, plaintiff is seeking information that it deems confidential. Furthermore, should an issue regarding confidential material arise during the deposition of a witness, the parties may contact chambers for a ruling on the matter. Additionally, the Court finds that the conduct of neither of the moving parties rises to a level that would warrant preclusion or the striking of their pleadings.

Accordingly, defendant Abiomed's motion is granted only to the extent that plaintiff is ORDERED to provide responses to defendant Abiomed's Second Supplemental Notice for Discovery and Inspection dated November 13, 2015; and to its Third Supplemental Notice for Discovery and Inspection dated February 17, 2016, if she has not already done so; and it is further ORDERED, that plaintiff's motion to strike is denied and defendant Abiomed is ORDERED to comply with

all demanded and Court-ordered documentary discovery and produce a witness for examination before trial within thirty (30) days of receipt of a copy of this decision and order; if it has not already done so.

This constitutes the decision and order of the court.

ENTER

J.S.C

HON. LAURA JACOBSON

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