

**Szabo v Pamela Hunte, D.D.S. P.C.**

2017 NY Slip Op 30692(U)

April 4, 2017

Supreme Court, Kings County

Docket Number: 506897/15

Judge: Larry D. Martin

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At an I.A.S. Trial Term, Part 41 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 4<sup>th</sup> day of April, 2017.

**PRESENT:**

Hon. LARRY D. MARTIN, J.S.C.

PETRA SZABO,

Plaintiff,

Motion Sequence #2  
INDEX No. 506897/15

-vs-

PAMELA HUNTE, D.D.S. P.C. and  
PAMELA HUNTE,

Defendants.

The following papers numbered 1 to 5 read on this motion

Papers Numbered

Notice of Motion

and Affidavits (Affirmations) Annexed \_\_\_\_\_

\_\_\_\_\_ 1-2 \_\_\_\_\_

Answering Affidavit (Affirmation) \_\_\_\_\_

\_\_\_\_\_ 3 \_\_\_\_\_

Reply Affidavit (Affirmation) \_\_\_\_\_

\_\_\_\_\_ 5 \_\_\_\_\_

Memorandum of Law \_\_\_\_\_

\_\_\_\_\_ 4 \_\_\_\_\_

Upon the foregoing papers, plaintiff Petra Szabo (“plaintiff”) moves for an order, pursuant to CPLR § 2304 to quash the subpoena served upon nonparty Dr. Alejo Parellada (“Dr. Parellada”) by defendants Pamela Hunte, D.D.S., P.C. and Pamela Hunte (collectively, “defendants”), and pursuant to CPLR § 3103 for a protective order denying the deposition of Dr. Parellada.

**BACKGROUND FACTS & PROCEDURAL HISTORY**

Plaintiff commenced the instant action to recover, inter alia, compensatory and punitive damages, as a result of defendants’ alleged violation of New York State Executive Law § 290 and New York City Administrative Code § 8-107, which prevents employment discrimination on the basis of one’s disability. Plaintiff was employed as an office manager for defendants’ medical practice from on or about March 7, 2006 to on or about March 14, 2015. Plaintiff asserts that she suffered from an anxiety and/or panic disorder for which she began receiving psychiatric treatment from Dr. Parellada on or about October 2014. Subsequently, on or about February 21 2015, plaintiff

requested a reasonable accommodation from defendants via a written letter from Dr. Parellada. The letter indicated, among other things, that plaintiff's treatment consisted of prescription medication and talk therapy. The letter further suggested that defendants reduce the amount of weekly hours plaintiff worked and to replace some of plaintiff's office-time with working from home, among other things. On March 13, 2015, Dr. Parellada allegedly sent an email to defendants regarding the deterioration in plaintiff's condition, the fact that Dr. Parellada's treatment plan was not working, and Dr. Parellada's purported intent to meet with plaintiff very soon to change her medication. However, on or about March 14, 2015, defendants terminated plaintiff's employment. Plaintiff thereafter commenced the instant action alleging that defendants terminated her rather providing her with a reasonable accommodation.

On August 29, 2016, defendants served Dr. Parellada with a subpoena duces tecum, which sought delivery of "complete and accurate copies of the entire medical record, including mental health information, of Petra Szabo" (Affirmation in Opposition, exhibit E). In response, Dr. Parellada sent defendants copies of plaintiff's Psychiatric Medication Chart (*see* exhibit E). Thereafter, on October 3, 2016, defendants issued another subpoena to Dr. Parellada, requesting that he appear for a deposition on October 24, 2016 (*see* Plaintiff's Affirmation, exhibit A). On the following day, October 4, 2016, defendants issued a revised subpoena to Dr. Parellada, again requesting that Dr. Parellada appear for a deposition on October 24, 2016 and, additionally, to "produce at the deposition all documents in [Dr. Parellada's] possession related to Petra Szabo, including, without limitation, her entire medical record, intake forms, charts, prescriptions, notes, and correspondence (including notes, letters, faxes, and emails) to or from Petra Szabo, Daniel Genis[,] [plaintiff's husband], or Pamela Hunte" (Plaintiff's Affirmation, exhibit B). Plaintiff subsequently moved for the relief requested herein.

### DISCUSSION

Under New York Law, courts generally permit “full disclosure of all matter material and necessary in the prosecution or defense of an action” (CPLR § 3101 [a]; *see Yoshida v Hsueh-Chih Chin*, 111 AD3d 704, 705 [2d Dept 2013]). Notably, Courts have interpreted the “material and necessary” requirement liberally, “to require disclosure, upon request, of any facts bearing on the controversy which will assist [in] preparation for trial by sharpening the issues and reducing delay and prolixity” (*Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014]; *Yoshida*, 111 AD3d at 705). With respect to parties seeking information from a nonparty, however, the subpoenaing party is required to “state, either on the face of the subpoena or in a notice accompanying it, the circumstances or reasons such disclosure is sought or required” (*Kapon v Koch*, 23 NY3d at 39 [internal quotation marks and citations omitted]; CPLR § 3101 [a] [4]).

As an initial matter, the Court notes that the information being sought from Dr. Parellada, a nonparty treating physician, is material and necessary because “[p]laintiff’s claims of disability discrimination are based on [d]efendants’ alleged failure to provide a requested reasonable accommodation” (Defendants’ Mem. of Law, 4). However, none of the subpoenas served on Dr. Parellada contain the required description of the circumstances or reasons why the requested information is being sought. As such, the Court finds that the subpoenas served on Dr. Parellada are facially defective (*cf. Matter of Kapon*, 23 NY3d at 39; *see Kooper v Kooper*, 74 AD3d 6, 13 [2d Dept 2010]).

In light of the insufficiency of the subpoenas served on Dr. Parellada, plaintiff seeks a protective order precluding defendants from deposing Dr. Parellada. Pursuant to CPLR § 3103, [t]he court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or

regulating the use of any disclosure device” (CPLR § 3103 [a]). Such an order is designed to “prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts” (*Yoshida*, 111 AD3d at 706). Moreover, depositions of a treating physician should generally be denied “unless necessary to prove a fact unrelated to diagnosis and treatment” (*Ramsey v New York Univ. Hosp. Ctr.*, 14 AD3d 349, 350 [1st Dept 2005]). Here, defendants assert that they seek to depose Dr. Parellada to obtain the following information: “(1) the authenticity, drafting, signing, and delivery of the correspondence purportedly from [Dr.] Parellada; (2) inconsistencies between the multiple versions of the correspondence purportedly from [Dr. Parellada]; (3) inconsistencies between the correspondence purportedly from [Dr.] Parellada and [Dr.] Parellada’s notes; (4) inconsistencies between the correspondence purportedly from [Dr.] Parellada and [p]laintiff’s testimony during her deposition; and (5) inconsistencies between [Dr.] Parellada’s notes and [p]laintiff’s testimony during her deposition” (Defendants’ Mem. of Law, 9). Defendants add that the deposition would enable them to “get information about the letter and e-mail purportedly from [Dr.] Parellada and [p]laintiff’s allegation that her behavior on March 13, 2015 was caused by an increased dosage of Xanax prescribed by [Dr.] Parellada” (*id.* at 10).

Based upon a review of the record submitted by the parties, and the relevant law, the Court grants plaintiff’s motion for a protective order only to the extent of quashing the prior subpoenas for failing to comply with the CPLR’s notice requirements. Notwithstanding, defendants may serve Dr. Parellada with the proposed subpoena annexed as exhibit H to its opposition papers. The Court finds that the information being sought therein is material and necessary, and “the circumstances or reasons requiring the deposition of [Dr. Parellada] [are] properly provided[,]” (*Bianchi v Galster Management Corp.*, 131 AD3d 558, 559 [2d Dept 2015]). Moreover, as author of the correspondence at issue in this matter, Dr. Parellada is the only source of the information sought by

defendants (*see Kapon*, 23 NY3d at 38; *Conte v County of Nassau*, 87 AD3d 558, 559 [2d Dept 2011]; *cf. Tuzzolino v Consolidated Edison So. of N.Y.*, 135 AD3d 447, 448 [1st Dept 2016]; *Ramsey*, 14 AD3d at 350).

**CONCLUSION**

Accordingly, plaintiff's motion to quash the subpoenas served on Dr. Parellada, and for a protective order precluding Dr. Parellada's deposition is granted only to the extent that the subpoenas are quashed for facial insufficiency. The foregoing constitutes the decision and order of the Court.

**For Clerks use only**

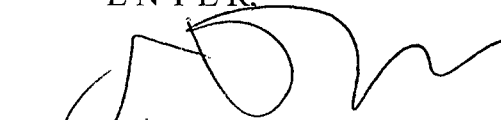
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**Motion Seq. #**

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HON. LARRY D. MARTIN,  
J.S.C.