

<b>Morrow v Belair Care Ctr., Inc.</b>
2017 NY Slip Op 33339(U)
September 29, 2017
Supreme Court, Nassau County
Docket Number: Index No. 603944/16
Judge: James P. McCormack
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SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack

Justice

\_\_\_\_\_ X

LINDA MORROW, as Executrix of the  
Estate of JOSEPHINE ROSSINO,

Plaintiff(s),

-against-

BELAIR CARE CENTER, INC., BELAIR  
NURSING & REHABILITATION  
CENTER, OUR LADY OF  
CONSOLATION GERIATRIC CARE  
CENTER, and OUR LADY OF  
CONSOLATION NURSING &  
REHABILITATIVE CARE CENTER,

Defendant(s).

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TRIAL/IAS, PART 27  
NASSAU COUNTY

Index No. 603944/16

Motion Seq. No.: 001  
Motion Submitted: 7/19/17

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X  
Affirmations in Opposition.....X  
Reply Affirmation.....X

Plaintiff, Linda Morrow (Morrow), as Executrix of the Estate of Josephine Rossino  
(Rossino), moves this court for an order, pursuant to CPLR §3124, compelling  
Defendants to produce a certain documents. Defendants, Belair Care Center, Inc., Belair

Nursing & Rehabilitation Center (collectively “Belair”), Our Lady of Consolation Geriatric Care Center, and Our Lady of Consolation Nursing & Rehabilitative Care Center (collectively “Our Lady”), oppose the motion.

Plaintiff commenced this nursing home malpractice action by service of a summons and verified complaint dated May 26, 2016. Issue was joined by service of an answer on behalf Our Lady dated July 18, 2016. Belair interposed an answer dated August 29, 2016.

Before a motion relating to discovery or bill of particulars can be brought, the movant is required to submit an affirmation of good faith indicating “that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion.” 22 NYCRR 202.7(a). The affirmation of good faith is supposed to indicate that the parties consulted over the discovery issues and the “time, place and nature of the consultation and the issues discussed...”, or that such conferral would be futile. 22 NYCRR 202.7(c). The parties are to make a diligent effort to resolve the discovery dispute. (*Deutsch v. Grunwald*, 110 A.D.3d 949 [2<sup>nd</sup> Dept. 2013]; *Murphy v. County of Suffolk*, 115 A.D.3d 820 [2<sup>nd</sup> Dept. 2014]; *Chichilnisky v. Trustees of Columbia University in City of New York*, 45 A.D.3d 393 [1<sup>st</sup> Dept. 2007]). Herein, Plaintiff’s counsel submits an affirmation of good faith that contains almost none of the required information. He claims that he wrote two letters over a three month period. However, counsel only submits the second letter, which was written at the behest of the court in an

attempt to have the parties try to resolve their discovery disagreements. The letter is less of an offer to discuss issues than a threat to comply with his demands. He threatens motion practice and boldly declares the letter his “final good faith effort”. There was also one phone call, but counsel neglects to mention what was discussed during the phone call and what disagreements still exist. In fact, in their opposition papers, counsel for Belair complains that the phone call was somewhat *pro forma* in that Plaintiffs counsel seemed uninterested in discussing the issues, but instead reiterated his demands and refused to negotiate over them. The purpose of 22 NYCRR 202.7 is not to go through the motions of discussing discovery issues, but to actually discuss them with a good faith effort to resolve them. The court is not satisfied with the affirmation of good faith, or that diligent efforts were made to resolve the issues contained in the motions. Therefore, the motion will be denied, as defective.

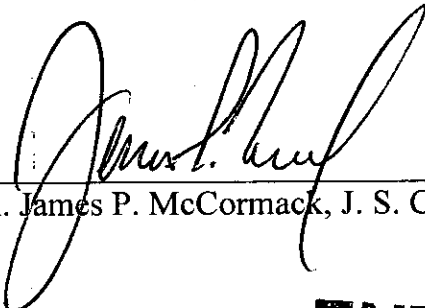
However, upon reviewing the letter Plaintiff sent on May 30, 2017, the court is of the opinion that many of the demands are overly broad. This court would not likely compel a party to turn over “all management agreements or consulting agreements”, staffing and payroll schedules of all employees who interacted with Rossino, all policies and procedures, written job descriptions for all employees, unlimited daily and monthly acuity and census reports and “records and letters to/from NYS Department of Health and surveys”. Plaintiff is strongly urged to pare down and narrow the demands.

Accordingly, it is hereby

**ORDERED**, that Plaintiff's motion to compel is DENIED, without prejudice with leave to renew upon proper compliance with 22 NYCRR 202.7 in its entirety.

This constitutes the decision and order of the court.

Dated: September 29, 2017  
Mineola, New York



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Hon. James P. McCormack, J. S. C.

**ENTERED**  
OCT 04 2017  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE