

**Gudkova v Carrier**

2018 NY Slip Op 32372(U)

September 26, 2018

Supreme Court, New York County

Docket Number: 150409/17

Judge: Barbara Jaffe

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

PRESENT: HON. BARBARA JAFFE  
*Justice*

PART 12

-----X

YANA GUDKOVA,  
  
Plaintiff,

INDEX NO. 150409/17

MOTION DATE \_\_\_\_\_

- v -

MOTION SEQ. NO. 1, 2

BRENT CARRIER,  
  
Defendant.

**DECISION AND ORDER**

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By notice of motion, plaintiff seeks a protective order denying defendant’s request for records of examinations of her for sexually transmitted diseases and restricting the use of other medical and psychological records sought by defendant (sequence one). Defendant opposes.

By notice of motion, plaintiff moves for leave to file an amended complaint to add claims of defamation *per se* and a bailment, and for a protective order striking defendant’s demand for a bill of particulars (sequence two). Defendant opposes.

In plaintiff’s summons and complaint, she asserts claims arising from the parties’ personal relationship and sets forth causes of action for replevin, conversion, and negligent and intentional infliction of emotional distress. (NYSCEF 1). In an amended answer, defendant counterclaims against plaintiff for slander *per se*, trespass, malicious prosecution, abuse of process, use and occupancy, “recover money lent,” and unjust enrichment. (NYSCEF 12).

### I. PROTECTIVE ORDER

Plaintiff asserts that any sexually transmitted diseases that she may have are unrelated to any claims or defenses in this matter, and that, therefore, records related to them will not lead to material and/or relevant evidence, but rather, are sought by defendant in order to harass and intimidate her. She observes that as she did not allege that a sexual relationship existed between them, she has not thereby placed her sexual condition in issue, and it is also irrelevant to defendant's counterclaims. Due to the private information contained in her medical and psychological records and defendant's behavior in publicizing her personal information and making defamatory remarks about her, plaintiff argues that a confidentiality order is warranted and necessary and that the records be disclosed only to the attorneys. (NYSCEF 23).

Defendant maintains that the motion is untimely as plaintiff did not object or move timely after being served with the discovery demand, and that having claimed claims to have suffered injury to her general physical and mental health as well as losing her enjoyment of life, she places all of her physical and mental history in issue, including any gynecological conditions. He opposes a confidentiality order that would limit disclosure to the attorneys as it would prejudice his defense. (NYSCEF 29).

In reply, plaintiff argues the motion is timely, that the confidentiality order may limit disclosure to attorneys and expert witnesses only but should not permit defendant to view her records, and that she has not placed her gynecological condition in issue. (NYSCEF 34).

Pursuant to CPLR 3103, the court may issue a protective order conditioning or regulating the use of any discovery device, to prevent "unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice" to a party. The party moving for a protective order bears the

burden of establishing the need for the order. (*Borgia v Rothberger*, 148 AD3d 1109 [2d Dept 2017]). Given the parties' correspondence related to this motion, it is timely. (NYSCEF 34).

Plaintiff does not place her entire mental and physical health in issue by virtue of her broad allegations of anxiety, depression, or other mental health issues, including lost enjoyment of life. (*See James v 1620 Westchester Ave. LLC*, 147 AD3d 575 [1<sup>st</sup> Dept 2017]). Moreover, defendant fails to establish any connection between plaintiff's alleged sexually transmitted diseases and her future enjoyment of life. (*See id.* at 576 [defendants did not submit evidence of connection between plaintiff's claimed HIV status and future enjoyment of life]; *Budano v Gurdon*, 97 AD3d 497 [1<sup>st</sup> Dept 2012] [same]). Plaintiff thus demonstrates that a protective order is warranted as to any records related to her sexual or gynecological history, including any records of sexually transmitted diseases.

Notwithstanding the parties' mutual animosity and conduct toward each other, plaintiff cites no authority for the proposition that defendant, a party to an action, may be prevented from viewing disclosed information. Thus, an order is warranted to the extent of restricting access to plaintiff's records to the parties, their attorneys, and any expert witnesses, and prohibiting them from disclosing the information therein to anyone outside of the litigation.

## II. MOTION TO AMEND AND STRIKE

Plaintiff's motion to amend her complaint to add claims for defamation *per se*, based on defendant's alleged publication of statements accusing her of crimes and insanity, and for a bailment, which she is permitted to plead in the alternative to her claims of conversion and replevin (*see e.g., Vays v 139 Emerson Pl.*, 94 AD3d 480 [1<sup>st</sup> Dept 2012] [plaintiff permitted to amend complaint to add alternative theory of recovery]), is granted as the motion is meritorious, discovery is still proceeding, and defendant fails to show any resulting prejudice.

As plaintiff fails to submit an affirmation of good faith related to her request for the striking of defendant's demand for a bill of particulars, that aspect of her motion is denied. (22 NYCRR 202.7[a][2] [no motion shall be filed related to disclosure or bill of particulars unless movant submits affirmation that counsel has conferred with opposing counsel in good faith effort to resolve issues raised in motion]; *Goodwin v Guardian Life Ins. Co. of Am.*, 156 AD3d 765 [2d Dept 2017] [plaintiff's motion to strike denied as, among others, he failed to attach required affirmation of good faith]).

### III. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion for a protective order is granted as follows:

- (1) defendant's request for any records related to plaintiff's alleged sexually transmitted diseases or gynecological conditions is denied and stricken; and
- (2) plaintiff's request for a confidentiality order is granted to the extent of limiting access to her medical and psychological records to the parties, their attorneys, and any expert witnesses and prohibiting disclosure to anyone outside of the litigation, and the parties are directed to enter into such an order within 30 days of the date of this order; it is further

ORDERED, that plaintiff's motion for leave to serve an amended complaint is granted, and the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; it is further

ORDERED, that defendant serve an answer to the amended complaint or otherwise respond thereto within 20 days of said service; and is further

ORDERED, that plaintiff's motion to strike is denied.

9/26/2018

DATE

  
BARBARA JAFFE, J.S.C.

HON. BARBARA JAFFE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	DO NOT POST			<input type="checkbox"/>	