

Wargold v Hudson Tr. Lines, Inc.

2018 NY Slip Op 33580(U)

March 8, 2018

Supreme Court, Rockland County

Docket Number: 035514/2014

Judge: Thomas E. Walsh II

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
SUSAN WARGOLD,

Plaintiff,

- against -

HUDSON TRANSIT LINES, INC. and JULIO RAMIREZ,

Defendants.
-----X

Thomas E. Walsh, II, J.S.C.

DECISION AND ORDER
Index No.: 035514/2014

Motion # 4- MG
DC - N
ADJ: 3/30/18

The following papers, numbered 1-3, were considered in connection with Plaintiff's application for an Order (1) restoring the within matter to this Court's trial calendar and (2) for such other and further relief as thus Court deems just and proper:

v

PAPERS

NUMBERED

Notice of Motion/Affirmation of Skylar K. Yankowitz, Esq./ Exhibits (A-D)	<i>it</i>	1
Affirmation of John U. H. Blumenstock, Esq.		2
Affirmation of Jack A. Yankowitz, Esq. in Reply and in Further Support of Plaintiff's Motion		3

The instant action is to recover damages for personal injuries sustained by Plaintiff on October 15, 2013 when Plaintiff was struck by a motor vehicle owned by Defendant Hudson Transit Lines, Inc. and operated by Defendant Julio Ramirez. Plaintiff commenced the action by filing and serving a Complaint dated December 4, 2014. Subsequent to the filing of the Summons and Complaint the instant action was delayed for numerous discovery disputes and for Plaintiff to seek a guardian for over a year and a half.

On July 19, 2017 Plaintiff filed a Note of Issue and Affirmation of Compliance indicating that there was an outstanding non-party deposition of New York State Police Trooper Miguel A.

Cepeda, which was scheduled for August 11, 2017. The non-party deposition of Trooper Cepeda was scheduled pursuant to a "so-ordered" subpoena issued by the undersigned. By way of letter to the undersigned dated July 27, 2017, the parties consented to vacate the Note of Issue to allow the non-party deposition of Trooper Cepeda. The parties appeared in Court before the undersigned on August 1, 2017 and the Note of Issue was vacated and the action was stricken from the calendar because the Plaintiff admitted that discovery was not complete. Defendant avers that they were also informed at the August 1, 2017 conference that the Plaintiff had been treating with a new physician and that Plaintiff would provide new authorizations. The non-party deposition of Trooper Cepeda was held on August 11, 2017.

Plaintiff brings the instant motion to restore the action to the calendar submitting that all discovery in the instant action is complete and the action is ready for trial.

In opposition to the Plaintiff's motion the Defendant submits that after the court conference in August 2017 the Plaintiff failed to provide the promised authorizations pertaining to the Plaintiff's newest physician and current condition continuing to delay the discovery that they are arguing is completed. Defendant avers that at the time of the filing of the opposition Plaintiff had not produced the authorization enabling the Defendant to obtain the treatment records of Marc Rosenblatt, D.O., Plaintiff's treating physician. According to Defendant they have only received two (2) pages of records from Access Physical Therapy.

Defendant concedes that the deposition of Trooper Cepeda occurred in August 2017 and that during the deposition exhibits were used and Defendant requested copies of the exhibits. According to Defendant, the Plaintiff has not provided the exhibits requested. Defendant surmises that the Plaintiff's actions may be the result of disorganization or "simple reluctance," and the Plaintiff's "behavior manifests a clear pattern of not disclosing discovery materials until absolutely order to do so." Therefore, Defendant opposes restoration of the instant action to the calendar "unless and until the plaintiff completes discovery."

In Reply Plaintiff submits that Defendant's claim that authorizations for Dr. Mark

Rosenblatt and a new therapy group have not been provided is a "false claim." Plaintiff avers that an authorization for Dr. Rosenblatt was served on Defendant's counsel on August 7, 2017. Plaintiff annexed a copy of the dated authorization as Exhibit A to the Reply Affirmation. The Plaintiff further submits that on November 2, 2017 the medical records of Dr. Rosenblatt and Access Physical Therapy and Wellness along with an authorization for the later were served on Defendant's counsel. Again, Plaintiff has annexed a copy of the aforementioned documents as Exhibit B to the Reply Affirmation. As to the copies of the exhibits marked at the non-party deposition of Trooper Cepeda, the Plaintiff annexed copies of the exhibits that were served in Defendant's counsel on December 6, 2017. Plaintiff submits that all of the outstanding discovery that Defendant argues should prevent the restoration of the instant matter to the Court's calendar has been provided and the Plaintiff has provided documentation of such.

Based on the documentation annexed to Plaintiff's Reply Affirmation the Court in its discretion is restoring the instant action to the Court's calendar. Plaintiff is directed to serve and file a Note of Issue and Certificate of Readiness by **TUESDAY MARCH 27, 2018**.

Accordingly, it is hereby

ORDERED that the Plaintiff's Notice of Motion (Motion #4) is granted in its entirety; and it is further

ORDERED that the instant action is restored to the Court's calendar; and it is further

ORDERED that the Plaintiff is directed to file and serve a Note of Issue and Certificate of Readiness by **TUESDAY MARCH 27, 2018**; and it is further

ORDERED that the parties are to appear for a conference on **FRIDAY MARCH 30, 2018 at 9:30 a.m.**

The foregoing constitutes the Decision and Order of this Court on Motion #4.

Dated: New City, New York
March 6, 2018



HON. THOMAS E. WALSH, II
Justice of the Supreme Court

TO:

THE YANKOWITZ LAW FIRM, P.C.
Attorneys for Plaintiff SUSAN WARGOLD
(via e-file)

GALLO, VITUCCI, KLAR, LLP
Attorneys for Defendant HUDSON TRANSIT LINES, INC. And JULIO RAMIREZ
(via e-file)