

Schiller v Empress Ambulance Serv., Inc.
2018 NY Slip Op 34228(U)
November 5, 2018
Supreme Court, Westchester County
Docket Number: Index No. 58806/2017
Judge: Joan B. Lefkowitz
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

-----X
NAAMI ADLER SCHILLER, as the Executor of the Estate
of ALAN SCHILLER, and NAAMI ADLER SCHILLER,
Individually,

Plaintiff,

-against-

EMPRESS AMBULANCE SERVICE, INC.,

Defendant.

-----X
LEFKOWITZ, J.

DECISION & ORDER
Index No. 58806/2017
Motion Date: Nov. 5, 2018
Seq. No. 2

The following papers were read upon plaintiff's motion pursuant to CPLR 2304 and 3101 seeking a protective order and seeking an order to quash the subpoena served on nonparty Dr. Rajeev Sindhvani ("Dr. Sindhvani"), and for such other and further relief as the court deems just and proper.

- Order to Show Cause - Affirmation in Support - Exhibits 1-5
- Affirmation in Opposition - Exhibits A-F
- NYSCEF File

Upon the foregoing papers and the proceedings held on November 5, 2018, this motion is decided as follows.

This action seeking damages for wrongful death was commenced by service of the complaint on or about June 21, 2017. Issue was joined by service of the answer on or about July 6, 2017. Plaintiff Naami Adler Schiller ("plaintiff") was deposed on March 23, 2018. In addition plaintiff produced three nonparty witnesses for depositions: the decedent's sons Matthew Schiller and Samuel Schiller, and decedent's friend David Reifer.

Plaintiff brings this motion for a protective order and to quash the subpoena served on nonparty Dr. Sindhvani, decedent's treating cardiologist.¹ Plaintiff argues that the subpoena should be quashed because plaintiff has already provided defendant with a complete set of Dr. Sindhvani's medical records for the decedent, as well as a HIPAA authorization for same.

¹ The September 13, 2018 Discovery Motion Briefing Schedule and the Order to Show Cause specifically limit plaintiff's motion to the portion of the subpoena which seeks Dr. Sindhvani's deposition testimony.

Plaintiff argues that a defendant in a personal injury action may not as of right depose any and all physicians who treated the injuries claimed by the plaintiff. Plaintiff contends that defendant is in possession of Dr. Sindhvani's medical records and defendant can have its own medical expert review those records and all other medical records provided to the defendant as a result of the HIPAA authorization.

In opposition to the motion defendant states that it is entitled to disclosure of all matter material and necessary to the defense of the action. Defendant states that plaintiff has not met her burden of showing that Dr. Sindhvani's deposition is utterly irrelevant to the action. Defendant contends that Dr. Sindhvani treated the decedent from at least July 3, 2008 through April 19, 2016, approximately a month prior to his death and therefore has unique knowledge as a fact witness as to, inter alia, the decedent's medical history, cardiac care treatment, existing medical conditions, and anticipated life expectancy. Defendant states that the medical records provided by plaintiff reveal that the decedent had a medical history of, inter alia, uncontrolled diabetes, coronary artery disease, coronary atherosclerosis, congestive heart failure, hypertension, multiple prior myocardial infarctions, stroke and noncompliance with medications. Defendant contends that Dr. Sindhvani's deposition is material and necessary to the defense of this action especially since such pre-existing medical conditions may have caused and contributed to the decedent's death from cardiac arrest and/or negatively impacted his life expectancy.

Additionally, defendant contends that although plaintiff has provided a copy of the decedent's medical records, those records do not contain information as to the extent of the decedent's aforementioned conditions and limitations, Dr. Sindhvani's impressions concerning the decedent's prognosis, the plan of treatment or the interpretation and analysis of diagnostic and laboratory studies ordered and/or performed by Dr. Sindhvani. By way of example, defendant states that on April 8, 2013 Dr. Sindhvani's notes indicate that the decedent was advised he was at a significantly elevated risk of sudden death but there is no further elaboration as to the basis for that opinion or what was meant by a significantly elevated risk of death. Defendant also notes that after the decedent's April 21, 2014 visit Dr. Sindhvani noted that the decedent's chief complaint was "follow up" with absolutely no notations as to the decedent's diagnosis, prognosis, or plan of care. Defendant further states that although Dr. Sindhvani noted that the decedent was very noncompliant with his medication there are no further details as to what medication the decedent was taking or in what manner he was failing to comply.

Defendant also states that despite multiple requests Dr. Sindhvani has failed to provide a complete, certified or original copy of the decedent's medical records despite having been served with the subpoena and having been provided with an authorization for same.

Defendant contends that Dr. Sindhvani's deposition testimony is necessary as neither plaintiff nor any of the other witnesses produced by plaintiff have been able to testify as to the decedent's medical history or medical condition or the impact of same upon his prognosis or life expectancy. Additionally defendant contends that neither plaintiff nor Dr. Sindhvani has asserted that Dr. Sindhvani's deposition would cause any unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice.

Pursuant to CPLR 3101(a), a party is entitled to "full disclosure of all matter material and

necessary in the prosecution or defense of an action.” The phrase “material and necessary” is “to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968] [internal quotation marks omitted]; see *Matter of Kapon v Koch*, 23 NY3d 32 [2014]). The party seeking disclosure has the burden to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims (*Foster v Herbert Slepoy*, 74 AD3d 1139, 1140 [2d Dept 2010]). The court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Mironer v City of New York*, 79 AD3d 1106, 1108 [2d Dept 2010]; *Auerbach v Klein*, 30 AD3d 451, 452 [2d Dept 2006]).

In the present case the deposition, and paper discovery, of the decedent’s treating cardiologist, Dr. Sindhvani, is material and relevant to the allegations in plaintiff’s complaint and to the defense of those allegations. The fact that Dr. Sindhvani is a nonparty does not require a different inquiry than if he was a party (*Kapon v Koch*, 23 NY3d 32 [2014]). In order to quash the subpoena plaintiff was required to demonstrate that either the discovery sought is utterly irrelevant to the action or that the futility of the process to uncover anything legitimate is inevitable or obvious (*Id.*). Plaintiff has failed to demonstrate that the discovery sought is irrelevant, and has failed to present any basis for quashing the subpoena or for granting an order of protection.

All other arguments raised on this motion and evidence submitted by the parties in connection thereto, have been considered by this court, notwithstanding the specific absence of reference thereto.

Accordingly, it is

ORDERED that plaintiff’s motion to quash the nonparty subpoena and for a protective order is denied in its entirety; and it is further

ORDERED that plaintiff is directed to serve a copy of this Order with Notice of Entry upon defendant and upon nonparty Dr. Rajeev Sindhvani within (10) days of entry; and it is further

ORDERED that counsel are directed to appear in the Compliance Part, Courtroom 800, on November 28, 2018 at 9:30 a.m. for a conference.

Dated: White Plains, New York
November 5, 2018


HON. JOAN B. LEFKOWITZ, J.S.C.

TO:

Service upon all counsel via NYSCEF

Service upon nonparty

Dr. Rajeev Sindhvani
2422 Central Park Avenue
Yonkers, New York 10710
By First Class Mail

CC: Compliance Part Clerk