

Taylor v Tivat Realty LLC

2018 NY Slip Op 34492(U)

December 6, 2018

Supreme Court, Bronx County

Docket Number: Index No. 31237/2017

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
PART 11

Index No. 31237/2017

RAYMOND TAYLOR,

Plaintiff,

DECISION/ORDER

-against-

Present:
Hon. Laura G. Douglas
J.S.C.

TIVAT REALTY LLC and
GAZIVODA MANAGEMENT LLC,

Defendants.

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to compel certain disclosure and for an award of costs and attorneys' fees:

<u>Papers</u>	<u>Numbered</u>
Defendants' Notice of Motion, Good Faith Affirmation of Robert Di Lauri, Esq. dated May 7, 2018, Affirmation of Robert J. Di Lauri, Esq. dated May 7, 2018 in Support of Motion, and Exhibits ("A" through "L").....	1
Affirmation of Justin Hartman, Esq. dated May 14, 2018 in Opposition to Motion and Exhibits ("A" through "C").....	2
Reply Affirmation of Robert Di Lauri, Esq. dated June 8, 2018, Reply Brief by Robert Di Lauri, Esq. dated June 8, 2018 and Exhibits ("A" through "C").....	3

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

The defendants seek an order pursuant to CPLR Rule 3124 compelling the plaintiff to provide certain discovery and awarding attorneys' fees and costs. The motion is granted solely as ordered below and is denied in all other respects.

The plaintiff seeks monetary damages for personal injuries purportedly sustained as a result of an accident on the defendants' property on April 25, 2017. The defendants contend that the plaintiff's bill of particulars and responses to the defendants' discovery notice(s) dated January 5, 2017 are incomplete. In addition, the defendants argue that they are entitled to an authorization to obtain the plaintiff's records

from Social Security, which the plaintiff has refused to provide.

With respect to the bill of particulars -

Item numbered "9" of the demand for a bill of particulars requests the nature of any previous injury, disease, illness, or condition claimed to have been aggravated, accelerated, or exacerbated by the underlying accident and the name and present address of each doctor who rendered treatment for said condition. In opposing this motion, plaintiff's counsel avers that the plaintiff has not plead such claims (*see* Hartman affirmation, paragraph "14"). Accordingly, no further response is required, since the plaintiff is precluded from recovering damages for such claims; and

Item numbered "11" requests the total amount of loss, a complete computation of any loss, and the nature and source of loss of such income, profit, and earnings and the date(s) thereof if any non-wage loss is claimed. The plaintiff's response was adequate and the plaintiff is limited to only the loss of income, profit, or earnings stated in this response or proper supplementation; and

Item numbered "12" requests an itemization of any other loss or expense incurred. The plaintiff's response was adequate and the plaintiff is limited to only the loss of income, profit, or earnings stated in this response or proper supplementation; and

Item numbered "13" requests what earnings, if any, the plaintiff claims to have lost. The plaintiff's response was adequate and the plaintiff is limited to only the loss of income, profit, or earnings stated in this response or proper supplementation; and

Item numbered "16" requests that the plaintiff describe all injuries sustained in any prior accident. The plaintiff properly objected to this demand as beyond the scope of a bill of particulars (*see* CPLR Rule 3043, *Harris v. Ariel Transportation Corp.*, 37 AD3d 308 [1st Dept 2007], and *Schatz v. Bankers & Shippers Insurance Company of New York*, 40 Misc2d 1061 [District Court, Nassau County, J. Philip B. Heller 1963]); and

Item numbered "17" requests that the plaintiff provide copies of all interrogatories or bills of particulars ever signed in said prior incidents. The plaintiff responded "not applicable". This is an adequate response, since it avers that no such items exist; and

Item numbered "18" requests that the plaintiff provide particulars as to any claimed damage to property. The plaintiff responded "not applicable". This is an adequate response, since it avers that no property damage is being claimed as a result of this accident and the plaintiff is precluded from claiming

same; and

Item numbered "19" requests that the plaintiff provide particulars if an intentional act or tort is claimed. The plaintiff responded "not applicable". This is an adequate response, since it avers that no intentional act or tort is being claimed and the plaintiff is precluded from claiming same; and

Item numbered "21" requests that the plaintiff state whether he was married at the time of the underlying accident. The plaintiff properly objected to this demand as beyond the scope of a bill of particulars (*see* CPLR Rule 3043, *Harris v. Ariel Transportation Corp.*, 37 AD3d 308 [1st Dept 2007], and *Schatz v. Bankers & Shippers Insurance Company of New York*, 40 Misc2d 1061 [District Court, Nassau County, J. Philip B. Heller 1963]); and

Item numbered "22" requests that the plaintiff provide the name and address of his spouse. The plaintiff properly objected to this demand as beyond the scope of a bill of particulars (*see* CPLR Rule 3043, *Harris v. Ariel Transportation Corp.*, 37 AD3d 308 [1st Dept 2007], and *Schatz v. Bankers & Shippers Insurance Company of New York*, 40 Misc2d 1061 [District Court, Nassau County, J. Philip B. Heller 1963]); and

Item numbered "23" requests that the plaintiff provide particulars if a claim will be made for loss of services or consortium. The plaintiff responded "not applicable". This is an adequate response, since it avers that no such claim is being claimed and the plaintiff is precluded from claiming same.

With respect to the discovery notice -

Item numbered "3" of the defendants' discovery notice requests production of the name, address, and policy number of the plaintiff's medical insurance policy relating to this claim and an authorization to obtain payment information from same. The plaintiff adequately responded by providing collateral source information by way of his workers' compensation information and an authorization to obtain these records; and

Item numbered "11" requests production of the name, address, and an authorization for all health care providers who examined, consulted, or treated the plaintiff or provided health insurance to plaintiff for any injuries or complaints set forth in the complaint from 2012 to date. In response, the plaintiff furnished certain authorizations, but they did not permit release of records for treatment of the injuries and conditions claimed prior to this accident. This is adequate, since the plaintiff has not plead a claim of aggravation, acceleration, and/or exacerbation of injury.; and

Item numbered "14" requests production of all documents claimed by the plaintiff as medical specials, out-of-pocket costs for medical treatment, and all liens asserted as a result of medical treatment for injuries in this action. The plaintiff claims over \$100,000.00 of special damages in his bill of particulars. He shall furnish the supporting documents or be precluded from recovering for this item of damages.; and

Item numbered "15" of the defendants' discovery notice requests production of any documents and evidence related to any claim for lost wages. The plaintiff shall provide an authorization to the defendants permitting the release of his employment records from NYC Department of Health and Mental Hygiene; and

Item numbered "16" of the defendants' discovery notice requests copies of every pleading, expert report, medical record, evidence, deposition transcript, statement, settlement correspondence, and evidence offered in and/or exchanged in any current, prior, or subsequent personal injury litigation. The plaintiff properly objected to this demand, since it is overbroad (*see* CPLR § 3103, *Diaz v. City of New York*, 117 AD3d 777 [2nd Dept 2014], and *Lestingi v. City of New York*, 209 AD2d 384 [2nd Dept 1994]); and

Item numbered "17" of the defendants' discovery notice requests an authorization to obtain the plaintiff's Medicare eligibility. The plaintiff adequately responded that he is not eligible for Medicare.; and

Item numbered "18" of the defendants' discovery notice requests an authorization to obtain the plaintiff's Medicare records. The plaintiff adequately responded that he is not eligible for Medicare.; and

Item numbered "19" of the defendants' discovery notice requests production of the name, address, and an authorization to obtain records from each and every employer, contractor, and other source of income of the plaintiff from 2012 to date. The plaintiff properly objected to this demand, since it is overbroad (*see* CPLR § 3103, *Diaz v. City of New York*, 117 AD3d 777 [2nd Dept 2014], and *Lestingi v. City of New York*, 209 AD2d 384 [2nd Dept 1994]); and

Item numbered "20" of the defendants' discovery notice requests production of the name, address, and authorization to obtain records from each and every gym and other social, recreational and/or club league/activity of the plaintiff from 2012 to date. The plaintiff properly objected to this demand, since it is overbroad (*see* CPLR § 3103, *Diaz v. City of New York*, 117 AD3d 777 [2nd Dept 2014], and *Lestingi v. City of New York*, 209 AD2d 384 [2nd Dept 1994]); and

Item numbered "21" of the defendants' discovery notice requests production of the name, address, and an authorization to obtain records for each and every pharmacy that the plaintiff utilized from 2012 to date. The plaintiff properly objected to this demand, since it is overbroad (*see* CPLR § 3103, *Diaz v. City of New York*, 117 AD3d 777 [2nd Dept 2014], and *Lestingi v. City of New York*, 209 AD2d 384 [2nd Dept 1994]); and

Item numbered "22" of the defendants' discovery notice requests production of the name, address, and an authorization to obtain records for each and every insurance company which covered the plaintiff from 2012 to date. The plaintiff properly objected to this demand, since it is overbroad (*see* CPLR § 3103, *Diaz v. City of New York*, 117 AD3d 777 [2nd Dept 2014], and *Lestingi v. City of New York*, 209 AD2d 384 [2nd Dept 1994]); and

Item numbered "23" of the defendants' discovery notice requests production of all evidence which shows proof that the plaintiff was a resident of Bronx County at the time of the filing of the complaint. The plaintiff properly objected to this demand, since it requests items evidentiary in nature (*see Philipp Brothers Export Corporation v. Acero Peruano S.A.*, 88 AD2d 529 [1st Dept 1982]).

With respect to the authorization for the plaintiff's Social Security records, the plaintiff responded that "Plaintiff is not receiving Social Security benefits". The defendants contend that they have the right to verify this claim by seeking records directly from Social Security. The defendants have not shown why such broad discovery is needed (*see Probala v. Rian Holding Co., LLC*, 26 Misc3d 1201 {Sup Ct NY Cty, J. Ling-Cohan, 2009}).

The application for an award of costs and attorney's fees is denied. The defendants have not demonstrated that any of the positions taken by the plaintiff rise to the level of frivolous conduct required to sustain an award under Part 130 of the Rule of the Chief Administrator nor have they shown that the plaintiff's responses have caused them to incur any meaningful prejudice.

Accordingly, it is hereby

ORDERED that the plaintiff is precluded from recovering damages for any claim of aggravation, acceleration, and/or exacerbation of a previous injury; and it is further

ORDERED, that the plaintiff is precluded from recovering damages for any claim of property damage; and it is further

ORDERED, that the plaintiff is precluded from recovering damages for an intentional act or tort;

and it is further

ORDERED, that the plaintiff is precluded from recovering damages for loss of services or consortium; and it is further

ORDERED, that the plaintiff shall provide the defendants with all supporting documents for his claim of special damages no later than 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED, that the plaintiff shall provide the defendants with an authorization to obtain his employment records from NYC Department of Health and Mental Hygiene no later than 30 days following service of a copy of this Order with notice of entry.

The foregoing constitutes the Decision and Order of this Court.

DATED: 12-6-18
Bronx, New York

LDG
HON. LAURA G. DOUGLAS
J.S.C.